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Subject PV Final Draft for Review by Advisory and Standards Boards

Karen,

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

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

Thanks for your guidance.

Tom O'Neill

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

May 12, 2006

Submitted by

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

The Moritz College of Law, The Ohio State University

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Report to the
U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

CONTENTS

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

The Research Team

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

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

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

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

EXECUTIVE SUMMARY

Background and Methodology

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

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

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

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

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

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

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

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, we:

1. Surveyed 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.[4]
3. Analyzed statistically provisional voting data from the 2004 election to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approached to voter identification.
4. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

KEY FINDINGS

Variation among the states

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

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

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

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

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

Variation within states

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

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

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

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

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

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

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

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

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

The lessons of litigation

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

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

States move to improve their processes

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

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

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

SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

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

Take a quality-improvement approach

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

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

Emphasize the importance of clarity

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

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

Court decisions suggest areas for action

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

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

Assess each stage of the provisional voting process

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

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

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

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

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

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

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

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

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

Final observation

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

Provisional Voting in 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other influences decreasing consistency among the states include:

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

- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, ans some required provisional voters to execute an affidavit. [15]
    - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
    - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
    - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
    - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office

- Voter registration databases provided information that reduced the number of provisional ballots counted.[16] In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots. [17]

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

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

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

  - In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.[18]

- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots. [19]
  - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks[20].
  - Those states that permitted less than one week counted an average of 35.4% of their ballots.
  - States that permitted between one and two weeks counted 47.1%.
  - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast[21].
  - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

Variation Within States

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

Election Line reported that:

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

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

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

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

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

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

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

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

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

- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

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

Effectiveness of Provisional Voting

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

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

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

Estimates of Votes Lost In 2000 Presidential Election

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

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

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

Legislative Response

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

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

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

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

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

Litigation

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

This litigation was significant nonetheless.

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

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

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

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

RECOMMENDATIONS

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

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

Recommendations for Best Practices

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

Self-evaluation of Provisional Voting –4 Key Questions

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

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?

2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?

3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

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

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

Best Practices For Each Step In The Process

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

The Importance of Clarity

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

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.[27] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.

- States should provide poll workers standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[28]

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

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

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

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

A. Registration and Pre-Election Information for Voters

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

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency. " [31]

2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[32]

3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

B. At the Polling Place

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

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

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

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

[32] The Century Foundation, op. cit.

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[33] Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." [34] A state statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [35] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[36] States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

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

[34] 2005 N.M. Laws 270 page no. 4-5.

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

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

C. Evaluating Voter Eligibility and Counting Provisional Ballots

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

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

2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct. [40] While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the

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[37] The Century Foundation, op. cit.

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

[39] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)_(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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

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

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. [41] Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, If a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[42]

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

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

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

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

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

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

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

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

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

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

2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.

3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

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

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

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

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

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

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

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

ATTACHMENT 1 – Data Sources for Classification of the States

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

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

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

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

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

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

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

New vs. Old States

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

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

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

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

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

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

Table 1
CATEGORIZATION OF STATES – Old and New

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

Statewide List of Registered Voters

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

Out-of-Precinct Ballots

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

Table 2
CATEGORIZATION OF STATES – Counting Out-Of-Precinct Ballots

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

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

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

Verification Method

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

Table 3
CATEGORIZATION OF STATES – Ballot Evaluation Methods

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

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

Data Collection

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

Table 4
Updated information by State

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

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

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

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

Data Differences

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

Table 5
Data Differences with the Election Day Study

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

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

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:48 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Voter ID Paper --Final Draft

I think this is an example of changes to the various versions

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:45 AM -----

"Tom O'neill"
[redacted]
03/16/2006 09:27 AM

To klynndyson@eac.gov
cc
Subject RE: Voter ID Paper --Final Draft

Karen,

Glad the paper arrived. Sorry it was a bit later than promised, but we reworked the statistical analysis on the basis of some insightful suggestions by the Peer Review Group. . .that took a few extra days (and nights). Looking back at my email to you, I realize the full statistical analysis was not attached as it should have been. It is appendix to the paper that will be of interest to those who want the details of our methodology. It is attached to this email.

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone at 908-794-1030.

Tom O'Neill

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Thursday, March 16, 2006 9:00 AM
> **To:** [redacted]
> **Subject:** Re: Voter ID Paper --Final Draft
>
> Tom-
>
> Thanks for getting this to me. I've forwarded it on to the Commissioners.
>
> Will try to see if I can get feedback next week.
>
> Regards-

K

Vercellotti314.doc

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
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Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns how such requirements affect voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Each state is classified as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with voter identification requirements ($r = -.21$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.16$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

Differences in voter turnout at the state level in 2004 varied based on voter identification requirements.[2] Taking into account the maximum requirements, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can place the effects of voter identification in a more accurate context. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the

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[2] Voter turnout is defined here as the percentage of the adult voting-age population that voted in November 2004, based on county vote totals reported by the states and U.S. Census population projections for the counties from 2003. McDonald and Popkin (2001) contend that using the voting-age population to calculate turnout understates turnout for a number of reasons. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults exerted a negative effect on voter turnout, as did the percentage of individuals living below the poverty line.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] Thus voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ($p = 0.0003$).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .40, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.36 [-0.04 (voter id) - 0.38 (Hispanic) + 0.06 (voter id X Hispanic)].

[Table 3 here]

The effects of the minimum requirements are not statistically significant (p = 0.15). The battleground state variable continues to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate has no statistically significant effect. As in the maximum identification requirements models, as the percentage of the population that is Hispanic or poor increases, turnout declines. As the percentage of elderly increases, so does turnout. The proportion of African-Americans in the population does not affect turnout. Adding interactive effects to the model results in a statistically significant and negative effect of minimum voter identification requirements on turnout. But one must interpret this estimate with caution. A chi-square test for the difference in fit between the two models shows no significant difference (p = 0.08), and thus no improvement to the fit when adding the interactions between voter identification requirements and the percentages of the county that is Hispanic or lives below the poverty line.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991). Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm-Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[5] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the

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[5] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens.

It is important to note here that the voter turnout rate for the CPS sample is much higher than the turnout rates presented in the aggregate data analysis. The U.S. Census Bureau reported that 89 percent of registered voters in the CPS sample said they voted (U.S. Census Bureau 2005). Turnout among the voting-age population was 58 percent in 2004, according to the aggregate data analysis. The difference is a result of several factors. One factor consists of the different denominators in calculating the turnout rate – registered voters versus the much larger voting-age population. Also, previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of a level of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be much higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election. In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a competitive gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes). Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, and estimated robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[7] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore

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[7] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

variation in predicted probability by group. I disaggregated the sample by the variable of interest (such as race, for example), omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[8] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent if the maximum requirement would be to state one's name, and the probability drops 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[9]

[Table 8 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify

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[8] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

[9] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 9 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[10] Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

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[10] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch,* Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		**Minimum Requirement**	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	63.1 %	**State Name**	61.3 %
Sign Name	58.6 %	**Sign Name**	60.4 %
Match Signature	62.1 %	**Match Signature**	59.2 %
Provide Non-Photo ID	57.8 %	**Provide Non-Photo ID**	57.6 %
Provide Photo ID	57.3 %	**Swear Affidavit**	58.7 %
Average Turnout for All States	59.6 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.70	0.02
Voter ID requirements	-0.02**	0.004	-0.04**	0.005
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.50**	0.03	0.51**	0.03
% African-American	0.02	0.01	0.04	0.04
% Hispanic	-0.17**	0.01	-0.38**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8234.5		-8253.5	

Coefficients are restricted maximum likelihood estimates. N = 3,112. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.62	0.01	0.66	0.02
Voter ID requirements	-0.008	0.005	-0.02**	0.006
Battleground State	0.04**	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.50**	0.03	0.49**	0.03
% African-American	0.02	0.01	0.02	0.03
% Hispanic	-0.17**	0.01	-0.37**	0.05
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8222.7		-8229.4	

Coefficients are restricted maximum likelihood estimates. N = 3,112. * p < .05 ** p < .01 (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		Minimum requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05** p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model

	Maximum requirement	Minimum requirement
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.759	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 8. Predicted probability of voter turnout – Voters above and below the poverty line

	Voters above the poverty line		Voters below the poverty line
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.784
Sign name	0.915	0.915	0.772
Match signature	0.909	0.907	0.758
Non-photo ID	0.903	0.899	0.745
Photo ID	0.897	----	----
Affidavit	----	0.891	0.731
Total difference from lowest to highest	0.023	0.031	0.053
N	49,935		5,038

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters who were below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:47 AM

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Subject Voter ID Paper --Final Draft

Karen,

Attached is the final draft of the Voter ID paper, with recommendations for the EAC to consider promulgating as best practices. Two appendices are included as part of the draft and a third, the statistical analysis of the effects of different voter ID requirements on turnout, is attached separately to this email.

We look forward to discussing this final draft with you and with the commissioners on April 3. I'll be preparing a Powerpoint presentation for that meeting. Any guidance you can give me later this month on particular questions that briefing should address would be appreciated.

The Moritz-Eagleton team will be meeting next Tuesday at 9:30 a.m.. If you have preliminary comments you would like us to consider, that meeting would be a most convenient occasion to discuss them.

Tom O'Neill

ReportFinalDraft.doc

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

1. Introduction and Report Background

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve implementation of the requirements for voters to show identification pursuant to [statute or regulation citation] It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

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

2. Voter Identification –Background and Approach of the Study

Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The burden of providing required ID documents on the voter may be greater at the polls on Election Day than at the time of registration. The burden of checking ID, even as simple as a signature match, can be much greater on election workers at the polls than on those registering voters. Poll workers may be faced with long lines and limited time. This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [1] The emphasis here is on Voter ID on Election Day and afterwards as election judges evaluate provisional

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[1] As the Carter-Baker Commission noted, photographic ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify identification. Commission on Federal Election Reform, pp 46-47.

ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

This analysis takes a view of voter ID issues broader than the rather narrow identification requirements in HAVA. Much of the national ferment over voter ID goes beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those casting a ballot for the first time who had not registered in person. The controversy in the states over voter ID stems from the HAVA requirements, goes beyond those requirements, and sets the context for the analysis here.[2]

Identification is often described as the critical step in protecting the integrity of the ballot, the process that ensures that the potential voter is eligible and permitted to cast a ballot and one ballot only. In fact, ensuring ballot integrity requires a perspective that takes in the entire voting process. Protecting the integrity of the ballot requires more than preventing the ineligible from voting. It also should ensure that all those who are eligible and want to vote can cast a ballot that counts, and that they can effectively cast a ballot for the candidate of their choice. The protection effort must take into account all forms of voting, including absentee ballots, and embrace each step in the process. A voting system that establishes onerous requirements for voters to identify themselves may prevent the ineligible from voting, but it may also prevent the eligible from casting a ballot. If the ID requirements of a ballot protection system block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or forget to bring to the polls the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This analysis does not include consideration of the incidence of vote fraud, the forms that it takes, nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. The EAC has commissioned a separate study of vote fraud and instructed us not to address that issue in this research.

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[2] Harvard Law Review 119:1127. "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA. . . . HAVA makes explicit that it shall not 'be construed to prevent a State from establishing election technology and administration requirements that are more strict than' HAVA itself provides. The states have accepted the invitation. "

Nonetheless, a broad view of ballot integrity is needed to appreciate the background and context of this narrower study. We explore the inter-relationships between Voter ID requirements and Provisional Voting and estimate the effects of various voter id requirements on turnout and on the casting of provisional ballots.

Voters lacking required ID, or who have ID that does not reflect their current address, may be able to vote only by casting a provisional ballot.[3] To the extent that stricter voter ID requirements divert more voters to the provisional ballot, voter ID requirements can put stress on the already pressured management of the polling place. Administering provisional ballots is more expensive than the normal ballot. Scrutiny of ID can create lines at the polling places, lines made longer as voters are diverted to the provisional voting line. Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle that will keep more citizens from the polls. A review of voter identification practices should keep in mind that America's problem may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes will be more effective if based on clear standards --legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

- Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?
- How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[4]
- How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity

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[3] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[4] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[5]

- How cost-effective is the system? Does it increase the security of the ballot at an affordable cost, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.
- If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[6]
- Does it comply with the letter and spirit of Voting Rights Act?
- The seventh question is more difficult to measure than those described in the 6 questions outlined above. The Voter ID requirements should have a neutral result on the composition of the qualified electorate. That is, those requirements should not be designed to reduce the turnout of particular groups of voters who may have a propensity to support one party over another. Whatever the requirement may be, all citizens should be able to comply with it easily and at no or minimal cost.

Summary of findings and conclusions

Voter turnout at the state level in 2004 declined where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Including other factors beyond voter id requirements diminishes the influence of voter ID on turnout. But the analysis still offers some support for the hypothesis that as the burden of voter identification

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[5] In New York, in 2004, disparities in training and voting information were made all too apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[6] For example, the Carter-Baker Commission accompanied its recommendation for a national voter ID card with a recommendations for an affirmative effort by the states to reach out and register the unregistered, to use the new Voter ID regime as a means to enroll more voters.

requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[7] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice that before states adopt a change described as increasing ballot security, states should publish an analysis of the number of eligible, potential voters that the new requirement may keep away from the polls or be permitted to cast only a provisional ballot as well as an estimate of the number of ineligible voters who will be prevented from voting.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. The data should be analyzed to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent and should describe the dynamics of voter ID in preserving the security of the ballot?

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[7] Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

  - Useful information could be supplied by exit polling. It would identify those who had cast a provisional ballot and ask why they were unable to cast a regular ballot. Answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
  - Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter id requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three criteria: the convenience of the voter, the total time allowed to evaluate ballots[8], and the safe harbor provision in presidential elections.

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[8] Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

3. Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements.* Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility.

TABLE 1 -- Voter ID Requirements

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later

New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Match Sig.	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID******	Provide ID	Bring ID Later
Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

**State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

***Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

****Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

*****Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

******Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

In 9 states, voters were required merely to state their names so that poll workers could locate them in the registration book. In 14 states, voters signed their names. In 8 states, voters' signatures were matched with a specimen signature. In 15 states voters had to show some form of ID, not necessarily an official picture ID. And in 5 states, voters were required to show an official photo ID, although in 2004 voters who lacked a picture ID could execute an affidavit and vote a regular ballot.

This neat assignment of each state to one of a few categories may fail to reflect actual practice at a polling place. Like any system run by fallible people it is subject to wide variation in practice. Voters may be confronted with demands for identification at variance with state statutes or legislation. Other voters may be waved through the process without a look at any document, no matter what the regulations may say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters may encounter.

It is not practical to attempt to capture the wide variety of how voter ID requirements may be actually implemented across the nation's tens of thousands of polling places. Recognizing that means that the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

Effect of Voter ID requirements on Turnout

Summary of Findings and Conclusions

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [9]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each

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[9] See Appendix ___ for the full report on voter ID and turnout.

level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. a form of identification, and providing a form of photo identification.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**63.1 %**	State Name	**61.3 %**
Sign Name	**58.6 %**	Sign Name	**60.4 %**
Match Signature	**62.1 %**	Match Signature	**59.2 %**
Provide Non-Photo ID	**57.8 %**	Provide Non-Photo ID	**57.6 %**
Provide Photo ID	**57.3 %**	Swear Affidavit	**58.7 %**
Average Turnout (All States)	**59.6 %**		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors an place the effects of voter identification in a more accurate context. To consider that broader context, our multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground for president, governor or senate voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-

Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line.

In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line.

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. (Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting.) Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age in years, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note

that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and Conclusions of the Analysis

The results presented here give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this analysis could not capture the dynamics of how identification requirements might lower turnout. Do these requirements dampen turnout because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most

effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

4. Litigation over Voter ID Requirements

There have been a handful of cases challenging identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether or not laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on cases challenging requirements that voters present some form of identifying documents if the photo identification is the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring <u>all</u> in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups,*

Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis,* 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson,* 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

suggest that best practice may be to conform to the NVRA's limitation on requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

5. Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

This information would allow a more informed judgment to be brought to bear in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [10] The dynamics of Voter ID requirements – how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That research might address that, so far as may be

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[10] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." The exclusion of voters through restrictive ID requirements could affect election outcomes as much as fraud by voters at the polls. *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

necessary to reduce vote fraud, could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended by our colleague Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed. [11]

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[11] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. These electronic photos should satisfy the anti-fraud concerns of conservatives as much as printed photos that citizens would be required to bring to the polls. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

a. Summary of case law on Voter ID issues (included with this draft)
b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
d. Compendium of states' legislation, procedures, and litigation

APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
    - 14th Amendment EPC: no classification (applied strict scrutiny)
    - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
        - Compelling interests: preventing voter fraud (deemed compelling)
        - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
        - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
    - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
    - Substantive due process and equal protection
        - No improper discrimination

  - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
  - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

***American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[12]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[12] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[13]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[14] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[13] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[14] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[15] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[15] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
    - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
    - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
    - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
    - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes,* 64 ALA. LAW. 364, Nov. 2003.
    - Discusses changes in AL to their election law in 2003, including adding voter ID
    - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
    - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
    - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
    - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
    - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
    - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
    - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
    - Lot of analysis on HAVA and voter ID
    - Little bit of historical
    - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?,* 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes,* 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section,* 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process,* 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet,* 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
  - Costs & Benefits of Internet voting
  - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?,* 63 U. Pitt. L. Rev. 159 (Fall, 2001).
  - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?,* 57 J. Mo. B. 294, Nov./Dec. 2001.
  - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon,* 34 Willamette L. Rev. 345 (Spring 1998).
  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud,* 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution,* 52 U. PITT. L. REV. 189 (Fall 1990).
  - History of voting and requirements
  - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy.* Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science.* 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age*. Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice*. 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics,* 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics*. 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review*. 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly*. 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001).

------ "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice*. 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis*. Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review*. 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy*. 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections*. Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective*. Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science.* 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------ "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------ "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------ "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------ "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------ "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------ "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------ *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------ "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------ "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------ "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------ "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------ *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------- *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------- "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------- "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review*. 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science*. 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly*. 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly*. 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly*. 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review*. 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice*. 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly*. 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison*. Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics*. Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine*. September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller*. Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review*. 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:46 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
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bcc
Subject Fw: Final Best Practices document final and attachment Two

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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:44 AM -----

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02/23/2006 04:12 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
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Final markups

Best Practices FINAL 2-23-06.doc - Final Best Practices__attachment Two.xls

Regards,

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DRAFT

Deliberative Process Privilege

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

November 23, 2005

Submitted by

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

The Moritz College of Law, The Ohio State University

FINAL DRAFT
11/23/2005

Report to the U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

CONTENTS

Executive Summary

Please provide an Executive Summary to provide background and summarize the key recommendations.

Background of the Research

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning provisional voting, a sample survey of local election officials, and a statistical analysis of provisional voting in the 2004 election. Also consulted as a basis for these recommendations were other studies, notably the EAC's Election Day Survey.[1] (Recommended as Research Methodology description)

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

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.[2] The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that where the ballot must be cast in order to be counted.[3]

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, first-time voters who cannot provide identification, as required under HAVA, and voters who were

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[1] Appendix 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures and describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

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

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

challenged at the poll.[4] HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. HAVA also requires election administrators to notify individuals of their opportunity to cast a provisional ballot.

Provisional Ballots in the 2004 Election

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.[5] (This number does not match the EAC 2004 Election Day Survey. 64.5% counted)

These totals obscure the tremendous variation in provisional voting among the states. HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Six states accounted for two-thirds of all the provisional ballots cast.[6] State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000, from a high of 7% in Alaska's to Vermont's .006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted ballots at more than twice that rate: 44%. (Or, as the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without."[7])

The wide variations in the use of provisional ballots argue for the promulgation of best practices that states can use to determine how to make procedures clearer to both officials and voters could improve the implementation of provisional voting across the country. (Is this a best practices recommendation?)

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

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

[5] These figures differ slightly from those in the Election Day Survey. Data used for this study include complete voting data for New Mexico, for which the Election Day Survey had only partial data, and vote totals for Pennsylvania, which was not included in the provisional voting analysis in the Election Day Survey. See the appendix to this report for a full explanation of the differences in data between this research and the Election Day Survey.

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

[7] Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

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

- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots. (The average of provisional ballots cast was 64.5% counted. A third category had to account for a significant amount over 64.5%. What was that category?)
- Perhaps another reason provisional ballots must be cast in the correct precinct in order to be counted is that local races are also important and that allowing provisional ballots to be counted by voters who cast them outside of the precinct and only counting the ballots for the upper ballot races for outside of the precinct can disenfranchise voters from participating in local races. This argument has been used by many legislatures and in court castes to require that provisional ballots must be cast in the correct precinct in order to be counted.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.[9] That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

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

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

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC should consider providing all states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning

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

curve. Two other possibilities exist. Current understanding of the provisional voting processes in use in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration— will be harder and take longer to achieve.[10] This ballot should mention something about election judges and their training.

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2. "Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail safe way for voters with registration problems a way to cast a ballot. (wording too strong) The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

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Other influences decreasing consistency among the states include:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted. Some states merely require a voter's signature, some match signatures, some require identity documents, others require an affidavit, and a few require photo identification. [11]
    - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
    - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
    - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
    - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half

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

[11] See Table 2 in Appendix 2 for information on the verification method used in each state.

(52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office. (the voter was registered, than the ballot counted, the voter did not have to present identification).

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- Voter registration databases provided information that reduced the number of provisional ballots counted.[12] In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

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- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots. [13]
    - In experienced states, the disparity was even more pronounced, 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
    - If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.[14]

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots. Perhaps it is the judges training or it is, in part, because of different laws. [15]

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

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

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

[15] For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly

Reacting to the lack of consistency within states, (not the Carter-Baker Commission) recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."[16]

Election Line reported that:

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

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

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

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

- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, high mobility, (no previous mention of this factor. What research exists to back up naming high mobility as a factor?) and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts were the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader

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non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

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

measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology (what is meant by this statement) and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available. (Are polling places posting their provisional voting signs? Are election judges doing their jobs?)

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

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

Estimates of Votes Lost In 2000 Presidential Election

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

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

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then,

might be 40% to 50% (ballots counted/votes lost)[*]. (this is unclear. What is trying to be said? Is a comparison of the # of provisional ballots actually counted to the MIT estimate of lost ballots in 2000 being made? If so, would the MIT survey be influenced by the implementation of statewide voter registration databases or other interim measures that would improve the quality of voter registration lists?) Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states[17] came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

> Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.[18]
>
> Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.
>
> The issue of counting provisional ballots cast in the wrong precinct was addressed by Colorado, Arkansas, and North Dakota. How was it addressed?

Litigation

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

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

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

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

This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.

- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.

- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

Need for Promulgation of Best Practices
Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. This is false. If they are registered (the voter registration database is checked as required by HAVA or restricted by state requirement) the provisional counts. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

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

Recommendations for Best Practices
Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity

among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

Self-evaluation of Provisional Voting –4 Key Questions (Best practice suggestion?)
The first recommendation is not for a specific procedure, but rather for a way of thinking about provisional voting. As legislators and election officials in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the system sufficiently robust (what system – the voting system or the procedures for provisional voting?) to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and with litigation looming?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

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

Best Practices For Each Step In The Process
We examined each step of the provisional voting process to identify specific areas where the states should focus their attention, and we offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process. (State how were these particular best practices chosen or arrived at?)

The Importance of Clarity

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

the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."[19]

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.[20] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.

- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[21] (does this mean that the state should provide poll workers training? Most provided by local election jurisdictions. Is the recommendation to deviate from current practice?)

- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [22] Recent legislation in Arizona indicates that HAVA's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot. [23]

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States

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

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

[21] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

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

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

can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency. " [24]

2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[25]

3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information. Why not recommend local websites to do the same as state sites?

B. At the Polling Place

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. It's the law. Do they understand that all have to do this? Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[26] After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." [27] Most states require this. It is not new. In fact, Florida's statutory training provisions are among the highest in the nation. Such statutory direction could help other states ensure uniform instruction of poll workers.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

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

[25] The Century Foundation, op. cit.

[26] 8 Colo. Code Regs. § 1505-1, Rule 7.1.

[27] 2005 N.M. Laws 270 page no. 4-5.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [28] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[29]

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from_production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody._Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.[30] Seems like most states require training; do they have data on that? Florida's statutory training provisions among the strongest in the nation.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots_should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."[31] Nonetheless, the *Panio v. Sutherland*[32] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the

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

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

[30] 10 Ill. Comp. Stat. Ann. 5/18A-10(b)._Indiana requires that the precinct election board give the ballots to the Inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4

[31] The Century Foundation, op. cit.

[32] 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.[33]

2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct. [34] The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report. EAC Chairman: does not agree w/ this recommendation. It does not take into account for local offices that would not be voted upon w/ such practices. Voters would then not be directed or go to their correct polling place to cast a ballot.

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location. [35] Can the best practice be to send voter to correct precinct – if its in the same building as suggested in this recommendation. Why disenfranchise voter from voting on a local race?

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed

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[33] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama – 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)_(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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

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

publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[36]

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

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

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to

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[36] 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available. Why is it suggested that completing eligibility evaluations are more critical in presidential elections? What about gubernatorial elections?

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

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

2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.

3. State laws or regulation should require the evaluation process for provisional ballots to be public. The process *not* the names since by law they cannot be revealed.

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

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

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations (what is meant by national quality organizations? Examples?) to evaluate the provisional ballot process within the broader context of the electoral system.

Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.

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

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

Conclusion – Research-based, continuing improvements for provisional voting are needed (This section should be the first part of the document)

The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

(Should this section be put under a Research Methodology section at the beginning?)

To answer those questions, the Eagleton-Moritz team undertook the following research efforts:

1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.

3. Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approached to voter identification
4. Collection and review of the provisional voting statutes and regulations in all 50 states.
5. Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research-based recommendations provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states moved forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

ATTACHMENT 1 – Characteristics of the Provisional Voting Process Classification of the States

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

Deleted: categories analyzed here ar

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

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

Please note that:

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

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

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

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

New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting[37] and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

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

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as “old” states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

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

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[37] This study can be found at: http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf.

Table 1
CATEGORIZATION OF STATES -- Old vs New

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

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[38] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

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

Table 2 (This table is no longer germane.)

CATEGORIZATION OF STATES -- Statewide Registration Database

Had Database 2004	No Database A-N	No Database N-W	HAVA Exempt or NA
Alaska	Alabama	Ohio	Iowa
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Idaho	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
16	27		8

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Out-of-Precinct Ballots

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

Table 3
CATEGORIZATION OF STATES – Counting Out-Of-Precinct Ballots

Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado (after the court case)	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois (Not sure the law is that clear. Please check different counties did it differently.)	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

Voter Identification

We relied on Electionline studies, including the Voter Identification study[39] and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.[40] The five

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[39] This study can be found at: http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf

[40] In 2004, ElelctionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

Table 4

CATEGORIZATION OF STATES – Forms of Identification Required

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Give Name	**Sign Name**	**Match Signature**	**Provide ID**	**Photo ID**
Maine	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
New Hampshire	*Idaho*	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
Wisconsin	Michigan	West Virginia	Georgia	
Wyoming	Minnesota		Kentucky	
	Mississippi		Missouri	
	Nebraska		Montana	
	New Mexico		*North Dakota*	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
9	14	8	15	5

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Verification Method

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

Table 5

CATEGORIZATION OF STATES – Ballot Evaluation Methods

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis. No states have been italicized. Is this correct?

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

Data Collection

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

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

Table 6
Updated information by State

Received Updated Data	Did Not Receive Updated Data
California	Alabama
District of Columbia	Alaska[41]
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland[42]	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska[43]	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
26 States	**25 States**

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[41] Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.
[42] Maryland reported provisional ballots that were counted per county, but not number cast.
[43] Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

Data Differences

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.
Please explain the 0/8022 discrepancy under North Carolina "differences" since you indicate the info was not updated from the database.

State	**EDS Numbers Cast/Counted**	**Our Numbers Cast/Counted**	**Differences**	**Updated Info from State?**
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	53,698/26,092	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73.806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

ATTACHMENT 2 – Data

Table 1 – Provisional Voting Basic Statistics

States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Alabama	Affidavit	0.10	28.00
Alaska	PV	7.20	97.00
Arizona	PV	3.66	73.00
Arkansas	PV	0.35	48.00
California	PV	3.96	74.00
Colorado	LPV	1.84	76.00
Connecticut	None	0.03	32.00
Delaware	None	0.01	6.00
District of Columbia	PV	3.51	71.00
Florida	PV	0.13	36.00
Georgia	None	0.12	30.00
Hawaii	None	0.01	7.00
Idaho	EDR	EDR	EDR
Illinois	None	0.42	51.00
Indiana	None	0.02	15.00
Iowa	PV	0.53	52.00
Kansas	PV	2.68	70.00
Kentucky	Affidavit	0.01	15.00
Louisiana	None	0.12	40.00
Maine	EDR	EDR	EDR
Maryland	PV	1.33	65.00
Massachusetts	None	0.08	23.00
Michigan	Affidavit	0.07	58.00
Minnesota	EDR	EDR	EDR
Mississippi	Affidavit		
Missouri	None	0.12	40.00
Montana	None	0.08	55.00
Nebraska	LPV	1.71	78.00
Nevada	None	0.29	40.00
New Hampshire	EDR	EDR	EDR
New Jersey	LPV	1.96	55.26
New Mexico	PV	1.16	57.00
New York	PV	3.27	40.30
North Carolina	PV	1.21	55.00
North Dakota	NR	NR	NR
Ohio	LPV	2.20	78.00
Oklahoma	None	0.01	8.00
Oregon	PV	0.39	85.00
Pennsylvania	None	0.45	49.00
Rhode Island	None	0.23	46.00
South Carolina	PV	0.20	65.00
South Dakota	None	0.02	12.00
Tennessee	None	0.14	38.00
Texas	Affidavit	0.10	21.00
Utah	None	2.00	70.00
Vermont	None	0.01	37.00
Virginia	PV	0.02	17.00
Washington	PV	2.44	80.00
West Virgina	PV	1.11	63.00
Wisconsin	EDR	0.00	32.00
States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Wyoming	EDR	0.01	25.00

When did Eagleton get the information for Missouri. Missouri enacted provisional voting in 2002 and it is likely it was in place for the November 2002 election Pre-HAVA.

Eagleton's PV, LPV, EDR notations are confusing. In the instance of Colorado, the LPV designation (in the PV Status row - HAVA column is incorrect.) In Colorado the voter did not have to vote in the precinct.

Table 2 -- Characteristics of State Provisional Voting Systems

States	Was there a Statewide DB in 2004?	Are Outside Precincts Counted in Presidential Elections?	Verification Method	What is the time line for counting PV ballots?	Is this Review process open?
Alabama	No	No	Check address & registration	7 days	unclear
Alaska	Yes	Yes	Signature	15 days	limited
Arizona	Yes	No	Check address & registration	10 days	unclear
Arkansas	No	Yes	Check address & registration	15 days	Unclear
California	No	Yes	Signature	28 days	yes
Colorado	No	Yes	Check address & registration	12 days	limited
Connecticut	Yes	No	Affidavit	6 days	unclear
Delaware	Yes	Yes	Affidavit	Until Completion	limited
D.C.	Yes	No	Check address & registration	*	limited
Florida	No	No	Signature	11 days	yes
Georgia	Yes	Yes	Affidavit	7 days	unclear
Hawaii	Yes	Yes	Affidavit	6 days	limited
Idaho	No	EDR	EDR	*	unclear
Illinois	No	Yes	Affidavit	14 days	unclear
Indiana	No	No	Bring ID later	13 days	yes
Iowa	No	No	Bring ID later	2 days	unclear
Kansas	No	Yes	Bring ID later	*	limited
Kentucky	Yes	No	Affidavit	3 days	unclear
Louisiana	Yes	Yes	DOB and Address	4 days	yes
Maine	No	EDR	EDR	*	unclear
Maryland	No	Yes	Bring ID later	*	unclear
Massachusetts	Yes	No	Affidavit	4 days	unclear
Michigan	Yes	No	Bring ID later	14 days	unclear
Minnesota	?	EDR	EDR	14 days	Unclear
Mississippi	No	No	Affidavit	*	yes
Missouri	No	No	Check address & registration	14 days	limited
Montana	No	No	Bring ID later	*	unclear
Nebraska	No	No	Affidavit	7 days	limited
Nevada	No	No	Affidavit	7 days	unclear
New Hampshire	No	EDR	EDR	*	unclear
New Jersey	No	No	Bring ID later	28 days	yes
New Mexico	Yes	Yes	Bring ID later	10 days	unclear
New York	No	No	Affidavit	10 days	yes
North Carolina	No	Yes	Varies	7 days	yes
North Dakota	NR	NR	NR	*	unclear
Ohio	No	No	Check address & registration	*	unclear
Oklahoma	Yes	No	Check address & registration	3 days	limited
Oregon	No	Yes	Signature	*	limited
Pennsylvania	No	Yes	Check address & registration	*	unclear
Rhode Island	No	Yes	Check address & registration	*	yes
South Carolina	Yes	No	Check address & registration	4 days	unclear
South Dakota	Yes	No	Affidavit	3 days	unclear
Tennessee	No	No	Affidavit	48 hours	unclear
Texas	No	No	Bring ID later	7 days	unclear
Utah	No	Yes	Bring ID later	*	unclear
Vermont	No	Yes	Affidavit	2 days	unclear

States	**Was there a Statewide DB in 2004?**	**Are Outside Precincts Counted in Presidental Elections?**	**Verification Method**	**What is the time line for counting PV ballots?**	**Is this Review process open?**
Virginia	No	No	Affidavit	7 days	limited
Washington	No	Yes	Check address & registration	*	yes
West Virgina	Yes	No	Check address & registration	30 days	unclear
Wisconsin	No	No	Bring ID later	*	unclear
Wyoming	No	No	Affidavit	*	unclear

* Data to come on timeline classifications for these remaing states.

[redacted]

Table 4 -- Litigation and Statues

States	Litigation pre-2004 election?	Litigation post-2004 election?	Were clarifying PV regulations promulgated post election 2004?	Type of Clarifications
Alabama				
Alaska				
Arizona		Yes	Yes	Voter ID
Arkansas			Yes	Wrong precinct
California				
Colorado	Yes	Yes	Yes	Wrong precinct, timeline, counting
Connecticut				
Delaware				
D.C.				
Florida		Yes	Yes	Timeline, eligibility
Georgia			Yes	Voter ID
Hawaii				
Idaho				
Illinois				
Indiana			Yes	Voter ID, timeline, counting
Iowa				
Kansas				
Kentucky				
Louisiana			Yes	Counting
Maine				
Maryland				
Massachusetts				
Michigan		Yes		
Minnesota				
Mississippi				
Missouri				
Montana			Yes	Eligibility
Nebraska				
Nevada				
New Hampshire				
New Jersey				
New Mexico			Yes	Counting
New York		Yes		
North Carolina		Yes	Yes	Wrong precinct, counting
North Dakota				
Ohio	Yes	Yes		
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota				
Tennessee				
Texas				
Utah				

States	**Litigation pre-2004 election?**	**Litigation post-2004 election?**	**Were clarifying PV regulations promulgated post election 2004?**	**Type of Clarifications**
Vermont				
Virginia			Yes	Timeline, voter notification
Washington	Yes	Yes	Yes	Voter ID, timeline, counting
West Virgina				
Wisconsin				
Wyoming				

Table 3 – Information for Voters

Provided on State Elections Website?					
States	**PV Requirements**	**VID Requirements**	**Registration Verification**	**Precinct Verification**	**Notification of Voters**
Alabama	No	Yes	No	No	Phone
Alaska	No	Yes	No	Yes	Phone
Arizona	No	No	No	No	Counties
Arkansas	Yes	No	No	No	Counties
California	Yes	No	No	Yes	Counties
Colorado	Yes	Yes	No	No	Counties
Connecticut	Yes	Yes	No	No	Phone
Delaware	Yes	No	No	Yes	Website
D.C.	Yes	No	Yes	Yes	Website
Florida	No	Yes	No	No	Counties
Georgia	No	Yes	Yes	Yes	Counties
Hawaii	No	Yes	No	Yes	Phone
Idaho	EDR	Yes	No	No	EDR
Illinois	Yes	No	No	No	Website
Indiana	No	No	No	No	Phone
Iowa	Yes	Yes	No	No	Mail
Kansas	Yes	No	No	No	Counties
Kentucky	Yes	No	Yes	Yes	Website
Louisiana	Yes	No	No	Yes	Phone
Maine	EDR	Yes	No	Yes	EDR
Maryland	Yes	Yes	No	No	Website/Phone
MA	Yes	No	No	Yes	Phone
Michigan	Yes	Yes	Yes	Yes	Mail
Minnesota	EDR	Yes	No	Yes	EDR
Mississippi	No	No	No	No	Counties
Missouri	Yes	Yes	No	No	Phone
Montana	No	Yes	No	No	Mail
Nebraska	No	No	No	No	Website/Phone
Nevada	No	No	No	No	Website/Phone
New Hampshir	EDR	No	No	No	EDR
New Jersey	Yes	Yes	No	No	Website/Phone
New Mexico	Yes	Yes	No	No	Phone
New York	No	No	No	No	Mail
North Carolina	No	No	Yes	Yes	Website
North Dakota	NR	Yes	NR	No	NR
Ohio	Yes	Yes	No	No	Phone
Oklahoma	No	Yes	No	No	Phone
Oregon	No	No	No	No	Phone
Pennsylvania	Yes	Yes	No	No	Phone
Rhode Island	Yes	Yes	No	No	Website
South Carolina	Yes	Yes	Yes	No	Website
South Dakota	Yes	No	No	Yes	Mail
Tennessee	No	No	No	No	Mail
Texas	Yes	Yes	No	No	Mail
Utah	Yes	Yes	No	Yes	Phone
Vermont	No	Yes	No	Yes	Phone
Virginia	Yes	Yes	No	Yes	Phone
Washington	No	Yes	No	No	Counties
West Virgina	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:45 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Please provide me with a hard copy of the Eagleton cost proposal, when you can

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:43 AM -----

Nicole Mortellito/CONTRACTOR/EAC/GOV
01/20/2006 02:01 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: Please provide me with a hard copy of the Eagleton cost proposal, when you can

EAC Eagleton Institute Budget 3-22-05-1.xls

Regards,

Nicole K. Mortellito
Special Projects
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
01/20/2006 12:54 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
cc
Subject Please provide me with a hard copy of the Eagleton cost proposal, when you can

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100

Washington, DC 20005
tel:202-566-3123

Eagleton Institute of Politics, Rutgers The State University of New Jersey
US Election Assistance Commission Project Budget (3/22/05)

Description	**Budget**	
Personnel		
Eagleton faculty/senior staff	35,000	Mandel, Weingart, Reed, Linky (various percentages)
Eagleton staff: logistics/administrative/clerical	15,000	(various percentages)
Fringe (32.5%)	16,250	
	66,250	
Hourly Personnel		
Research Coordinator	21,250	1250 hours at $17 per hour
Logistics/Admin Coordinator	12,325	725 hours at $17 per hour
Research assistants	7,200	300 hours at $12 per hour for two researchers
Fringe on Hourly (9%)	3,670	
	44,445	
Subtotal Personnel Expenses	**$110,695**	
Honoraria		
Honoraria for Peer Review Group	**10,000**	10 at $1,000
Public Hearings (3 in 3 cities)		
Public Hearings	75,000	3 hearings at $25K per EAC figures
2 Hearings in DC- train, ground, lodging, meals*	3,480	attended by 3 staff
1 Hearings in St. Louis- air, ground, lodging, meals**	2,640	attended by 3 staff
	81,120	
Briefings/Meetings with EAC		
Train, ground, lodging, meals***	**5,200**	5 briefings in DC, attended by 2 staff
General Operations		
Office supplies, software, telephone, copying, postage	10,000	
Desktop computers, laptop, printer	10,000	
	20,000	
Subcontract		
Project Director- O'Neill	**79,500**	80% time April – Aug., 60% Sept. – Oct.
Ohio State University- Legal Analysis	**84,744**	Partner institution, Moritz College of Law, OSU
Subtotal Non Personnel Expenses	**$280,564**	
Subtotal All Direct Cost	**391,259**	
Modified Total Direct Cost $277,015****		
F&A on Modified Total Direct Cost (55.5%)	153,743	Rutgers University federally approved rate.
TOTAL Project Budget	**$545,002**	
Optional Surveys		
State Election Officials	15,000	Eagleton
Young Voters	25,000	Eagleton
Provisional Voting, 1st state	116,000	OSU Political Science
Provisional Voting, 1st additional state	75,000	OSU Political Science
Provisional Voting, 2nd additional state	60,000	OSU Political Science
Total Optional Surveys (no F&A)	**$291,000**	

* Travel and lodging to two hearings in DC includes $260 for train fare to DC, $200 for hotel/lodging, and $60 per day for two days for meals= $580 per person per trip for three people.

** Travel and lodging to one hearing in St. Louis includes $500 airfare to St. Louis, 2 nights hotel/lodging at $100, and $60 per day for three days for meals= $880 per person for three people.

*** Travel and lodging to five Briefings/Meetings with EAC includes $260 for train fare to DC, $200 for hotel/lodging, and $60 for meals= $520 per person per trip for two people.

**** Modified total direct cost is equivalent to total direct cost except for two items - F&A included only on first $25K of subcontract with Project Director ($79,500) and first $25K of subcontract with OSU ($84,744).

Karen Lynn-Dyson/EAC/GOV

03/28/2006 04:50 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

bcc

Subject FYI-Eagleton

Turns out that Eagleton was doing a brief conference call with their project staff this afternoon and they asked me to participate briefly. Looked for you guys and you were in the Commissioner Retreat. Basically shared some very general thoughts with them and framed it as a series of questions/issues that might arise when they make their presentations next week.

Spoke of the CVAP vs. VAP issue, exit polls and CPS data versus using our Election Day survey and speaking with Election Officials about these topics. Also framed the issue of possible bias in their report by suggesting that they start out explaining how and why they have arrived at their statement about voter Id (burdensome, onerous, etc). Also suggested framing this by speaking of African American and elderly voter ID attitudes that appear to contrast with attitudes expressed by Hispanic voters. Did also ask about why they didn't look at Asian voters and if they included the March 15 2006 Census Bureau report in their analysis.

They took these comments under advisement and will be ready to address these and other topics at Monday's meetings.

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

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:44 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: No Cost Extension Request

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:43 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
01/13/2006 01:15 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Lucy Baruch" <baruch@rci.rutgers.edu>
Subject No Cost Extension Request

Karen - I am attaching a spreadsheet providing the information you have requested (Attachment 1), but I want to highlight a few points which may not be immediately self-evident.

First, the original budget (Attachment 2) we submitted to the EAC, dated March 22^nd , did not itemize personnel expenses by each person. In addition, when we actually began work two months after submitting that budget, we decided to reallocate more time to people within Eagleton and hire fewer outside hourlies.

Second, in the figures I sent you in late December we tried to account for all the expenses and projections but overlooked a few things including neglecting to include the honoraria for our peer review team. Hence, the figures we're now sending are different than what I sent in December.

Lastly, we originally discussed a no-cost extension through February, but since we don't yet have the EAC comments on our draft Provisional Voting material nor an estimate of when they are likely to be ready, I think it is prudent to extend the no-cost extension through March 31^st . We would still like to conclude by the end of February, but if you can approve the extension for another month we could avoid going through this process again if everything is not complete six weeks from now.

It is my understanding that Rutgers will soon be sending our December invoice. At this time, I would also like to request that we combine January and February an invoice the EAC once for that time period.

As you can see, we are currently projecting an ending balance of approximately $10,000. If additional expenses are incurred beyond what is currently projected, we're confident they will not exceed the original budget of $560,002.

Thanks and I look forward to hearing from you.

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:44 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: No Cost Extension Request

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:42 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
11/30/2005 04:47 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'Neill" [redacted]
Subject No Cost Extension Request

Extension Justification.doc Karen - I am attaching the documentation for our request. Please let me know if you require the material in a different format and/or further information.

Thanks very much, John

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> John-
>
> Thanks ever so much for forwarding this message on to Connie.
>
> I'm awaiting your language describing why you are requiring a no-cost
> extension on the contract, and for what period of time you wish to
> extend the contract.
>
> I'm told this is a very simple process on this end, and I've prepared
> the necessary form and a memo.
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100

EAGLETON INSTITUTE OF POLITICS

Request to the U.S. Election Assistance Commission for a No-Cost Extension and Reallocation of Funds

November 30, 2005

Why we need a no -cost extension

The original work schedule called for EAC to publish in mid-October voluntary guidance and/or recommended best practices for provisional voting based on our research. In making that time estimate, we did not provide sufficient time for the EAC to review and consider the draft reports that would form the basis for that publication. The draft was complete in August, but the EAC's schedule did not permit us to brief the commissioners and staff until early September. We did not receive EAC comments until October, making it impossible to complete the work on the original schedule. Taking account of those comments and guidance from EAC required several weeks. The EAC did not receive our final draft report and recommendations for best practices until late November. We are now awaiting the EAC's comments on that final draft, which we have been told to expect in January.

The additional time required to complete the work on provisional voting has delayed the completion of our analysis of Voter Identification issues. The draft report on that topic will be submitted to the EAC in mid January.

Because the EAC has decided to issue recommendations for best practices on these topics, rather than voluntary guidance, we will finish the work within two months of the original completion date since the adoption process will be shorter. Note that meeting this schedule is dependent on the time needed by the EAC to review our work.

This extension will entail additional personnel time but, since no public hearings on "best practices" are required, if the EAC does not object, funds originally allocated for the hearings would be available for transfer to support the additional staff and consultant time necessary to complete the work.

When will work be completed and funds fully expended?

As shown on the attached schedule, work on this contract will be completed in three phases. The EAC will receive our final report and recommendations for best practices in provisional voting during the week of January 23, 2006 (assuming that we receive the EAC's comments on the draft report submitted on November 28 by January 9).

We will submit our draft report, alternative approaches, and compendium of statutes, regulations, and litigation on Voter Identification Issues during the week of January 16, 2006. If the EAC is able to return comments to us no later than the week of January 30, we will have submit the final report and recommendations for best practices on Voter Identification to the EAC during the week of February 13.

The total project budget is $560,002. As of October 31st, the EAC has been invoiced for $259,081.79; the balance remaining is $399,920.21. We anticipate that the project will be complete and the balance of funds fully expended by February 28, 2006. The final invoice for the contract will be submitted to the EAC within 75 days of the close of the project.

REVISED SCHEDULE FOR
November 2005 – February 2006
November 10, 2005
Assumes no guidance document, only analysis and recommended best practices

DATE	Project Management	Provisional Voting	Voter ID
Week of 10/31		Review draft report to EAC (Team) Submit comments on report (Team)	Voter ID Research to TV
Week of 11/7	Status reports to JD for October tasks (all)	Redraft report (TON) Review and approve report (Team) Final draft report (TON)	Research continues (TV)
Week of 11/14	Submit monthly progress report (JD)	Submit report to Project Team for comments (TON)	Research continues (TV)

Week of 11/21		Project team comments received Submit report to EAC for review and to PRG for information (TON, JW)	Complete data collection for Voter ID analysis. (TV)
Week of 11/28		EAC review	Draft report on Voter ID analysis (TV)
Week of 12/5	Status reports to JD for November tasks (all)	EAC review	Internal review (PT)
Week of 12/12	Submit monthly progress report (JD)	EAC review	Revise draft (TV) Draft alternatives (TON) Review and comment on alternatives (PT)
Week of 12/19		EAC review	Complete draft report and alternatives (TV, TON)
Week of 12/26		EAC review	Review draft report and alternatives (PT)

Week of 1/2/06	Status reports to JD for December tasks (all)	EAC review	Report and alternatives to PRG for review
Week of 1/9/06		Receive comments from EAC and revise report as needed	PRG meets and comments Revise (TV & TON)
Week of 1/16/06	Submit monthly progress report (JD)	Project team reviews and approves revised report	Submit draft report, alternatives and compendium to EAC EAC reviews
Week of 1/23/06		Finalize analysis and best practices and submit to EAC for publication and further action as	EAC review continues
Week of 1/30/06		[redacted]	Comments from EAC Revise (TV & TON)

Week of 2/6/06	Status reports to JD for January tasks (all)		Review and approve revised report and recommendations for best practices (PT)
Week of 2/13/06	Submit monthly progress report (JD)		Submit report and best practices to EAC for publication and further action as appropriate
Week of 2/20/06	FINAL status reports to JD for all tasks (all) Final project and fiscal report to EAC PROJECT ENDS		[redacted]

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:56 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Voter ID Report and Appendices

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:54 AM -----

"Tom O'neill"
[redacted]
05/08/2006 07:15 PM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, john.weingart@rutgers.edu
Subject Voter ID Report and Appendices

Karen,

Attached is the final draft report on our Voter ID analysis, revised to incorporate the comments made by the EAC at and after our meeting in Washington and the new statistical analysis performed by Tim Vercellotti, which I sent you last Friday. Included in the attached file are about 60 pages of appendices. You may or may not want to distribute all the appendices to the reviewers who will take part in Thursday's conference call. They might find Appendix A useful; it provides a detailed summary of the actual statutory language on Voter ID in each of the states. The other appendices, which are called for as deliverables in the contract, provide worthwhile information for the record, but are not likely to offer material for the reviewers to focus on.

When it comes time to distribute this material to the advisory boards before our meeting with them in May, once again you may want to exercise judgment about how much of it is likely to prove of interest to them.

We look forward to Thursday's teleconference.

Tom O'Neill

VoterIDReport0508.doc

REVISED FINAL DRAFT
05/08/06

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

This report to the United States Election Assistance Commission (EAC) analyzes the effects of voter identification requirements on turnout in the 2004 election and makes recommendations for best practices to evaluate proposals for voter ID requirements. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a draft report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

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

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. They are progressively more rigorous based on the demands they make on voters.[1] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity,

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[1] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, we drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints on voter ID requirements.

Findings

Our analysis of data from the 2004 election indicates that the form of identification required of voters affects turnout. Lack of ID can keep voters from the polls or prevent them from casting a regular ballot if they go to the polling place.[2] This finding emerged from both the analysis of aggregate, county-level data and the individual-level data of the Current Population Survey. The overall effect for all registered voters was fairly small, but statistically significant.

Voter turnout in 2004 was lower in states where voter identification requirements were more demanding. The data show a general movement toward lower turnout as voters are required to present levels of proof of their identify.

---

[2] It also seems reasonable to conclude that in states that require an identity document to vote, more voters –those lacking the required ID—will cast provisional ballots. This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.

The aggregate data show that 60.9 percent of the estimated citizen voting age population turned out in 2004. An average of 64.6 percent turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification, a reduction of 6.5 percentage points. That figure, however, probably overstates the effect of voter ID requirements since the inclusion of other factors in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of other factors, the analysis supports the hypothesis that as voter identification requirements increases, turnout declines.

The effects were more pronounced for some specific subgroups. Hispanic voters, the poor and those who did not graduate from high school appear to be less likely to vote as the identification requirement becomes more demanding. The analysis for some other demographic groups illustrate the range of effects predicted for more rigorous voter ID requirements:

Race or Ethnicity

- In the individual-level data for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of identification requirements.
- More rigorous ID requirements did not have a statistically significant effect when looking at all African-Americans, but
- African-American voters from households below the poverty line were 7.5 percent less likely to vote as the ID requirements varied from stating one's name to providing photo identification.

Income

- Citizens from poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.

Education

- Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the requirements ranged from stating one's name to providing photo identification.

Age

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Turnout by young (18-24) African-American voters in states that required a government-issued photo ID was about 10% less likely to vote than in states where they had only to state their name.
- The elderly, while they would be slightly less likely to vote as the requirements changed from stating name to providing photo ID, would not necessarily be affected in the dramatic manner predicted by opponents of photo identification requirements.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity.[3] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

The current lack of understanding of precisely how voter ID requirements affect turnout can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the

---

[3] The EAC has contracted with other researchers to study vote fraud issues.

2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[4] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements affect the decision by potential voters to go or stay away from the polls-- are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

---

[4] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
    I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[5], and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is

---

[5] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

SUMMARY OF RESEARCH

Background and Approach of the Study

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [6] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[7]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[8]

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[6] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

[7] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[8] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and , if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[9] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot

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[9] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

rejected.[10] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here can best be described as the questions policy-makes should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[11]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[12]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[13]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve

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[10] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

[11] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[12] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[13] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[14] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[15]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, nor unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another.

Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex. Moving beyond the statutes and regulations,

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[14] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[15] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places.

Like any system run by fallible people, the voter ID process is subject to variation in practice.[16] Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Under the pressures of Election Day, there is no sure way to report the wide variety of conditions each voter encounters. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. Nevertheless, we are satisfied that the categories used in this report provide a level of discrimination among voter identification regimes sufficient for the analysis that we have undertaken.

TABLE 1 -- Voter ID Requirements[17]

State	**Forms of ID Required 2004**	**Current ID Requirement for First-Time Voters**	**Current ID Requirements for All Other Voters**	**Verification Method for Provisional Ballots**
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit

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[16] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

[17] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration
South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable for first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Effect of Voter ID requirements on Turnout

We examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

The Voter ID category assigned to each state is shown in Table 1. We analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [18]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 64.6 percent of the citizen voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis supports the hypothesis that as voter identification requirements become more stringent, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Methods

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had

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[18] See Appendix for the full report: Tim Vercellotti, "Analysis of Voter Identification Requirements on Turnout," The Eagleton Institute of Politics, Rutgers University, May 4, 2006.

to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[19]

We coded the states according to these requirements to test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

Election laws in many states, however, offer exceptions to these requirements if potential voters lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). In recognition of this fact, we also categorized states based on the *minimum* requirement for voting with a regular ballot.

In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states).

We treated the minimum ID in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

We examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the

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[19] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

The aggregate data posed a greater challenge to determine percentage of the voting-age population that has U.S. citizenship. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue we estimated the 2004 citizen voting-age population for each county using a method reported. Therefore, we calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. This method was used in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission.

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. In the statistical analysis, we coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification.

Findings

As the level of required ID proof increases, with photo identification as the most demanding requirement, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.6 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.8 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone do not determine voter turnout. Other factors make a difference in turnout, often a greater difference than the ID requirements. Multivariate models can take into account other predictors of turnout and therefore paint a more complete picture of the relationship between voter identification requirements and turnout. The model used here also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The maximum ID requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. The more senior citizens and African-Americans in the county, the higher the turnout. The percentage of the population living below the poverty reduced turnout. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance (p = .05).

The analysis tested the hypothesis that stricter voter ID requirements dampen turnout among minorities. The data revealed no statistically significant effect on turnout for African-Americans in general. But it revealed a significant reduction in turnout for Hispanics and the poor. The analysis using the minimum ID categories produced similar results.

Analysis of the aggregate data at the county level supports the hypothesis that as voter ID requirements grow stricter, turnout declines. This effect is strongest in counties with concentrations of Hispanic residents or families below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout.[20] Married people are more likely to vote than those who are not married. To explore the effects of voter identification requirements on turnout, examining individual-level data is important.

Individual-level Analysis

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 60.9%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger citizen voting-age population for the

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[20] Education is an important factor in predicting turnout. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[21] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. Excluded are those who said they were not registered to vote and those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Also excluded are respondents who said they were not U.S. citizens.[22]

The dependent variable in these analyses is whether a respondent reported voting in the November 2004 election. As in the aggregate analysis, stricter voter ID requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004.

Table 3 Predicted probability of voter turnout

ID Category	Maximum requirement	Minimum requirement
State name	91.2%	91.1%
Sign name	90.6%	90.3%
Match signature	90.0%	89.5%
ID	89.4%	88.7%
Photo ID	88.7%	----
Affidavit	----	87.8%
Difference from lowest to highest	**2.50%**	**3.30%**
N	54,973	

Predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

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[21] The Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent.

[22] The CPS did not ask the voting questions of respondents who were not U.S. citizens. The design of the questionnaire skips those questions for non- citizens.

The influence of voter identification requirements, holding all other variables constant, is shown in Table 3 below. The probability of voting dropped with each level of voter identification requirement, with a total drop of 2.5 percent, across the five types of identification for the maximum requirement and 3.3% for the minimum requirements. [23]

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group.

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

- Turnout in states requiring photo ID was predicted as 8.9 percentage points lower than in states where voters simply stated their names.
- The strictest ID requirements reduced the probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out by 7.8 to 9.2 percentage points.
- For African-Americans in the 18- to 24-year-old age group the gap was 10.6 percentage points.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[24] Allowing the maximum voting requirement to

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[23] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

[24] Respondents were coded as being above or below the U.S. Census Bureau's 2004 poverty line based on their reported annual household income and size of the household.

vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well. Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Conclusions of the Analysis

As the stringency of voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data.

- In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements.
- Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.
- African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education.

- Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification.

- When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters.

- The effects on African-American voters were pronounced for two specific sub-samples, African-American voters living below the poverty line and those in the 18- to 24-year-old age group.
- The elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. Do potential voters who cannot or do not want to meet the identification requirements simply stay away from the polls? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? (Proponents of stricter voter ID requirements might argue that some part of the reduction comes from keeping the truly ineligible from voting.)

Our data alone cannot resolve these questions. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.
It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued

photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction,

enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups,* Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson,* 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the

legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [25]

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[25] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal*

The dynamics of Voter ID requirements –how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed. [26]

Election Reform, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

[26] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

a. Summary of Voter ID Requirements by State (included)
b. Summary of case law on Voter ID issues (included with this draft)
c. Analysis of Effects of Voter ID Requirements on Turnout (furnished separately)
d. Indexed database of major articles on Voter ID Requirements and related topics
e. Compendium of states' legislation, procedures, and litigation (available as an electronic document)

Appendix A
Summary of Voter Identification Requirements By State

Prepared by
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Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification: (1) A current valid photo identification. (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following: a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification. b. A valid United States passport. c. A valid Alabama hunting or fishing license. d. A valid Alabama permit to carry a pistol or revolver. e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States. f. A valid United States military identification card. g. A certified copy of the elector's birth certificate. h. A valid Social Security card. i. Certified naturalization documentation. j. A certified copy of court records showing adoption or name change. k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card"). (c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b). (e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law. (f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs. Effective Date: June 24, 2003	Ala. Code § 17-11A-1
Alaska	Provide ID	(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including (1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or (2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this	Alaska Stat. § 15.15.225

		paragraph must show the name and current address of the voter. (b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under AS 15.07.050, and did not provide identification as required in AS 15.07.060. (c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot. effective June 17, 2003	
Arizona	Provide ID	B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot: 1. The person shall present either one of the following: (a) A current form of identification that bears a photograph of the person and the name of the person. (b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person. 2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584. Effective Dec. 1, 2003	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	7-5-305. Requirements. (a) Before a person is permitted to vote, the election official shall: (1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list; (2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth; (3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list; (4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate; (5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct. (B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files. (C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct; (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files; (7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and	Arkansas Code Annotated § 7-5-305

		(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card. (B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification. (ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney. (iii) The prosecuting attorney may investigate possible voter fraud; and (9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the preson is a disabled voter and presents himself or herself to vote. Effective: July 16, 2003	
California	Sign Name	Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article. (Enacted in 1994, no amendments since)	Cal. Elec. Code § 14216
Colorado	Provide ID	(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges, * * * (4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title. (19.5)(a) "Identification" means: (I) A valid Colorado driver's license; (II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.; (III) A valid United States passport; (IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state; (V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States; (VI) A valid United States military identification card with a photograph of the eligible elector; (VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector; (VIII) A valid medicare or medicaid card issued by the United States health care	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

		financing administration; (IX) A certified copy of a birth certificate for the elector issued in the United States; or (X) Certified documentation of naturalization. (b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado. Effective 5/28/2004	
Connecticut	Provide ID	(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate. Effective May 10., 2004	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record. Effective: July 9, 2002	15 Del. Code § 4937
D.C.	Sign Name	(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection. (2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the	D.C. Code § 1-1001.07

		polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection. (3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records. (Effective April 3, 2001)(not added as part of 2005 amendment)	
Florida	Photo ID	101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector. (2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49. **97.0535** (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired: 1. Florida driver's license. 2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles. 3. United States passport. 4. Employee badge or identification. 5. Buyer's club identification. 6. Debit or credit card. 7. Military identification. 8. Student identification. 9. Retirement center identification. 10. Neighborhood association identification. 11. Entertainment identification. 12. Public assistance identification. (b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant: 1. Utility bill.	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535

		2. Bank statement. 3. Government check. 4. Paycheck. 5. Other government document (excluding voter identification card). Version effective 1/1/2005-12/31/2005	
Georgia	Provide ID	(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following: (1) A valid Georgia driver's license; (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification; (3) A valid United States passport; (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state; (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business; (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; (7) A valid Georgia license to carry a pistol or revolver; (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States; (9) A valid United States military identification card; (10) A certified copy of the elector's birth certificate; (11) A valid social security card; (12) Certified naturalization documentation; (13) A certified copy of court records showing adoption, name, or sex change; (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector; (15) A bank statement, or a legible copy thereof, showing the name and address of the elector; (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or (17) A government document, or a legible copy thereof, showing the name and address of the elector. (b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement." effective June, 2003	Ga. Code. Ann. § 21-2-417

Hawaii	Photo ID	(b) The voter shall present valid identification to the official in charge of the pollbook. ***Do I Need an I.D. to Vote on Election Day?*** **Yes.** Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification. From the 2004 version of the administrative code. **§ 11-136 Poll book, identification, voting.** Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person. After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. Last amended 2003.	Haw. Code. R. § 2-51-80 (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b) Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix HRS 11-136
Idaho	Sign Name	(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book. (2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein. (5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. (Last amended in 1972)	Id. St. §34-1106
Illinois	Give Name	Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he	10 Ill. Comp. Stat. 5/17-9

		shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.	
Indiana	Sign Name		West's Annotated Indiana Code § 3-11-8-25
Iowa	Sign Name	1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form: VOTER'S DECLARATION OF ELIGIBILITY I do solemnly swear or affirm that I am a resident of the .... precinct, ... ward or township, city of ...., county of ...., Iowa. I am a registered voter. I have not voted and will not vote in any other precinct in said election. I understand that any false statement in this declaration is a criminal offense punishable as provided by law. ______________________ Signature of Voter ______________________ Address ______________________ Telephone Approved:	Iowa Code § 49.77

		Board Member 2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials. 3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner. A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote. (From 2004 version of Iowa Annotated Code; effective January 1, 1995)	
Kansas	Sign Name	(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention. (Approved April 14, 2004, 2004 Kansas Laws Ch. 93)	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	117.227 Confirmation of voter's identity Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification. Effective: 7/15/02 31 KAR 4:010. Voter identification cards. Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.	Ky Rev. Stat. Ann. 117.227 31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	A. Identification of voters. (1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place. (2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant	La. Rev. Stat. Ann. 18:562

		shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565. Effective: 1/1/2002	
Maine	Give Name	The voting procedure is as follows. 1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice. (In effect at time of 2003 amendment: 2003, c. 584, § 9)	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	10-310. (a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall: (1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot; (2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or (ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article; (3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register; (4) verify the address of the voter's residence; (5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and (6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.	Md. Elec. Law § 10-310
Mass.	Give Name	Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited. Last amended in 1981 (5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).	Mass. Ann. Laws 54 § 76 950 Mass. Code Regs. 52.03
Michigan	Sign Name	(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state	Mich. Comp. Laws Ann. §

		identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727. (2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector. The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies. (Effective March 31, 1997)	168.523
Minnesota	Sign Name	(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not	Minn. Stat. § 204C.10

		more than $10,000, or both." (b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth. (c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest. (Effective January 1, 2004)	
Mississippi	Sign Name	* * * When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance. (Effective January 1, 1987)	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list: (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state; (2) Identification issued by the United States government or agency thereof; (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri; (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; (5) Driver's license or state identification card issued by another state; or (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose. (Last amended in 2002)	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address. (From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [Unrelated section was amended in 2005])	Mont. Code. Ann. §13-13-114(1)(a)
Nebraska	Sign Name	(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document. (Last amended in 2003) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter. (Last updated in 2003)	Neb. Rev. Stat. § 32-913 Neb. Rev. Stat. § 32-914
Nevada	Match Sig.	1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2. 2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are: (a) The card issued to the voter at the time he registered to vote; (b) A driver's license; (c) An identification card issued by the Department of Motor Vehicles; (d) A military identification card; or	Nev. Rev. Stat.§ 293.277

		(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture. Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers. b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery. c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5). Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

		case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list. E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot. G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster. (From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)	(Recompiled as §1-12 -7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)
New York	Match Sig.	1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith. 2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election. 3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature. 4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the	N.Y. Law § 8-304 (McKinney)

		space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record. 5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same Last Amended 1986	
North Carolina	Give Name	(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook. 1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address. (From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark. The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot. (Effective at time of last update, 1992 H 182, eff. 4-9-93)	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry. (Last amended in 1990) Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours. (Last amended in 1990)	Okla. Stat. Ann. tit. 26, § 7-114 Okla. Stat. Ann. tit. 26, § 7-117
Oregon	Match Sig.	All elections in Oregon are Vote by Mail. An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity (http://www.uhavavote.org/votingguide/votebymail.html) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register. (In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))	
Rhode Island	Give Name	(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form: BALLOT APPLICATION (Poll List) Senatorial District ____________________ Representative District ____________ Voting District ________________________ Election Date ____________________________________ I hereby certify that I am a registered and qualified elector in the above voting district of City of and hereby make application for ballots to be voted at this election. ____ (Signature of Voter) ____ (Residence Address) Number Approved ____ (Supervisor of Election)	R.I. Gen. Laws § 17-19-24

		(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time. (Last amended 2004, Current through January 2005 Session)	
South Carolina	Photo ID	**§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.** When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5- 125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers. Last amended: 1968	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either: (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or	S.D. Codified Laws § 12-18-6.1

		technical school, located within the State of South Dakota. Last amended March 2004	
Tennessee	Provide ID	Identification of eligible voters (a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet. (2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists: (A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar; (B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list; (C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and (D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission. Last amended 2003	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place. (Last amended in 1997)	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges. (b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district. (3) If the election judge determines that the voter is registered: (a) the election judge in charge of the official register shall: (i) write the ballot number opposite the name of the voter in the official register; and	Utah Code Ann. § 20A-3-104

		(ii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter's name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) hand the voter a ballot; and (iv) allow the voter to enter the voting booth. (In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)	
Vermont	Give Name	Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and: (1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting. (2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting (Last amended in 2003)	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him. B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business. If the voter's name is found on the pollbook, if he presents one of the forms of	Va. Code. Ann.

		identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement. (Version in effect as of 2004- effective 4/12/2004)	
Washington	Sign Name	29A.44.201. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. (In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004) 29A.44.210. Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter. The precinct election officers shall then record the voter's name. Effective date: July 1, 2004	Wash. Rev. Code § 29A.44.201 & 29A.44.210
West Virginia	Match Sig.	(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon. * * * (c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the	W. Va. Code § 3-1-34 (a)

		election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter. (In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)	
Wisconsin	Give Name	6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number. (In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)	Wis. Stat. § 6.79
Wyoming	Give Name	(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22- 15-109, no identification shall be required when: (i) Voting in person or by mail after having registered in person; or (ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election. (In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)	Wyo. Stat. Ann. § 22-3-118

APPENDIX B –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14th Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

  - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
  - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

***American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[27]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[27] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[28]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[29] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[28] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[29] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[30] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[30] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

Appendix C

"Analysis of Effects of Voter Identification Requirements on Turnout "

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PROVIDED EARLIER

APPENDIX D

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age*. Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory*. Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice*. 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics*. 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review*. 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly*. 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001).

------ "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice*. 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis*. Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review*. 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy*. 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics*. 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections*. Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective*. Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union.* Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science.* 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------ "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------ "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------ "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------ "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------ "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------ "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------ *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------ "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------ "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly*. 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology*. 103:5 (March 1998).

------ "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology*. 103:1 (July 1997).

------ "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review*. 62:6 (December 1997).

------ *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions*. New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science*. 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies*. 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report*. 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review*. 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice*. 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior*. 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government*. New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics*. 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------ *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------ "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------ "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review.* 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix E

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:56 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised Voter ID Analysis

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:54 AM -----

"Tom O'neill"
[redacted]
05/04/2006 05:00 PM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, foley.33@osu.edu, [redacted] "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>
Subject Revised Voter ID Analysis

Karen,

Attached is Tim Vercellotti's Voter ID analysis revised to use Citizen Voting Age population as the base for turnout calculations and to take account of comments or issues raised by the EAC and our Peer Review Group. This draft is for distribution to the reviewers who will meet by teleconference on May 11, at, we understand, 11:30 a.m.

You are receiving this at the same time that it is being distributed to the Eagleton-Moritz team so that the new reviewers will have a week to prepare for our conversation on the 11th. Early next week you will receive a revised summary paper on Voter ID that incorporates the new data and findings in Tim's revised analysis. That too will be for distribution to the new reviewers.

Tom O'Neill

VoterIDAnalysis VercRev0504.doc

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University

May 4, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater for some specific types of requirements. For example, critics argue that requiring voters to produce government-issued photo identification on Election Day is more demanding than, say, requiring that they state their names at the polling place. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I treated the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[2]

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[2] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. I coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the

dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county exerted a positive effect on voter turnout, and the percentage of individuals living below the poverty line had a negative effect. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance (p = .05).

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] In addition, adding the interactions to the model resulted in the percentage of Hispanics in the population having a direct and negative effect on turnout. The interactions suggest that voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data (p < 0.005).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

[Table 3 here]

The effects of the minimum requirements fell short of statistical significance (p = 0.08). The battleground state variable continued to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate had no statistically significant effect. As in the maximum identification requirement model, as the percentage of the population that is poor increased, turnout declined. As the percentage of elderly increased, so did turnout. The proportion of African-Americans in the population had a positive effect on turnout, while the percentage of Hispanics did not affect turnout.

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intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.13 [-0.03 (voter id) - 0.13 (Hispanic) + 0.03 (voter id X Hispanic)].

Adding interactive effects to the model resulted in a statistically significant and negative effect of minimum voter identification requirements on turnout. The percentage of Hispanic adults in the county had a significant and negative effect on turnout, and the percentage of individuals below the poverty line continued to have a negative effect. Interactions between the percentages of Hispanics and those below the poverty line and minimum voter identification requirements also were significant. The percentage of African-Americans in the county and the interaction between African-Americans and voter identification requirements were not significant. A chi-square test for the difference in fit between the two models showed that the model with interactions provides a better fit to the data ($p < .025$).

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the demands of voter identification requirements increase, turnout declines. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[5] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[6] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S.

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[5] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[6] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[7] As in the analysis of aggregate data, I coded voter identification requirements for each respondent's state of residence on a scale of one to five, with one representing the least demanding requirement (stating one's name) and five representing the most demanding requirement (photo identification or affidavit).

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes).[8] Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which

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[7] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[8] Asian-Americans are included in the "other non-white races" category. In response to a request from officials at the U.S. Election Assistance Commission who had read an earlier version of this paper and were curious about the experiences of Asian-Americans, I ran models using Asian-Americans as a separate category in addition to the models presented here. Voter identification requirements did not have a statistically significant effect on whether Asian-American voters said they turned out in the 2004 election.

calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[9] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 0.912 for stating one's name to 0.887 for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of .025, or 2.5 percent, across the five types of identification.[10] When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it

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[9] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[10] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest, omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[11] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of Black/Non-Hispanics voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent when the maximum requirement was stating one's name, and the probability dropped 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Breaking down the 18- to 24-year-old age group by race shed additional light on the effects of voter identification requirements on specific groups.

[Table 8 here]

The gap in predicted probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out was 9.2 percent when the identification requirements varied from stating one's name to providing photo identification. The gap was 7.8 percent when taking into account the minimum requirements. The effects of maximum voter identification requirements also were statistically significant for African-Americans in the 18- to 24-year-old age group, with a gap in

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[11] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

the predicted probability of voting of 10.6 percent. Maximum and minimum voter identification requirements were not a significant predictor of voting among Hispanics ages 18 to 24.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[12]

[Table 9 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements). Given that political discourse about voter identification requirements includes concerns about the effects of the requirements on poor and minority voters, I also ran probit analyses for sub-samples of white and minority voters who fell below the poverty line. The voter identification requirements did not exert statistically significant effects on turnout among poor White/Non-Hispanic and Hispanic voters, but did have a significant effect on Black/Non-Hispanic voters who were below the poverty line.[13] Allowing the maximum voting requirement to vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 10 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

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[12] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

[13] The lack of significant effects for poor Hispanic voters is in contrast to the results from the aggregate data analysis. The sub-sample of poor Hispanic voters was small (n = 491), which may have contributed to the lack of statistical significance.

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit. African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters. The effects on African-American voters were pronounced for two specific sub-samples: African-American voters living below the poverty line and those in the 18- to 24-year-old age group. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[14] Or, do the requirements result in some voters

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[14] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not

being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		**Minimum Requirement**	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.6 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.69	0.02
Voter ID requirements	-0.01**	0.003	-0.03**	0.004
Battleground State	0.04*	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.48**	0.03	0.50**	0.03
% African-American	0.05**	0.01	0.06	0.03
% Hispanic	-0.02	0.01	-0.13**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8638.0		-8651.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.63	0.02	0.66	0.02
Voter ID requirements	-0.009	0.005	-0.02**	0.006
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.48**	0.03	0.48**	0.03
% African-American	0.05**	0.01	0.04	0.03
% Hispanic	-0.12	0.01	-0.13**	0.04
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	0.01	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8630.8		-8620.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		**Minimum requirements**	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05* p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model

	Maximum requirement	Minimum requirement
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White/Non-Hispanic voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.795	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 8. Predicted probability of voter turnout – Age groups by race

	White/Non-Hispanic 18 - 24		Black/Non-Hispanic 18 – 24
	Maximum requirements	**Minimum requirements**	**Maximum requirements**
State name	0.844	0.836	0.899
Sign name	0.823	0.818	0.877
Match signature	0.801	0.799	0.852
Non-photo ID	0.777	0.779	0.824
Photo ID	0.752	----	0.793
Affidavit	----	0.758	----
Total difference – lowest to highest	0.092	0.078	0.106
N	3,814		562

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Minimum voter identification requirements were not a significant predictor of voting for Black/Non-Hispanic voters ages 18 to 24. Maximum and minimum voter identification requirements were not a significant predictor of voting for Hispanic voters ages 18 to 24.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – Voters above and below the poverty line

	All voters above the poverty line		All voters below the poverty line	Black/Non-Hispanic voters below the poverty line
	Maximum requirement	Minimum requirement	Minimum requirement	Maximum requirement
State name	0.920	0.922	0.784	0.833
Sign name	0.915	0.915	0.772	0.816
Match signature	0.909	0.907	0.758	0.798
Non-photo ID	0.903	0.899	0.745	0.778
Photo ID	0.897	----	----	0.758
Affidavit	----	0.891	0.731	
Total difference from lowest to highest	0.023	0.031	0.053	0.075
N	49,935		5,038	1,204

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for white and Hispanic voters who were below the poverty line. Minimum voter identification requirements were not a significant predictor of voting for Black voters below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 10. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:55 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Schedule for completion of Prov. Voting and Voter ID research

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:53 AM -----

"Tom O'neill"
[redacted]
04/27/2006 03:40 PM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, foley.33@osu.edu, [redacted] tokaji.1@osu.edu
Subject RE: Schedule for completion of Prov. Voting and Voter ID research

Thanks, Karen.

Just to be sure that our expectations are clear, I'll summarize the perspective behind the schedule we submitted for the recent extension.

A. Provisional Voting

1. We presented our Provisional Voting report to the commissioners several months ago, revised its organization and clarified findings and recommendations in line with the comments of staff and commissioners, and we researched Tom Wilkey's additional question of the effect of the time for review on the evaluation of provisional ballots, which will be included in the final revision.
2. The final draft will be completed by May 5 .
3. Based on discussions with you and the commissioners we look forward to presenting that revised, final report to the Advisory Board on May 24, following whatever additional review the Commission finds appropriate.
4. Our discussions with Commissioners and staff anticipated that we would make some presentation of the provisional voting work at the Commission's public meeting in June, a presentation that might include revisions occasioned by the comments of the Advisory Board.

B. Voter ID

1. We presented our Voter ID research to the Commissioners in April and are now revising it in line with their comments.
2. That revised research paper will be discussed in mid May by reviewers selected by the Commission. That date was set specifically to allow us to prepare a final report that would be ready for review by the Advisory Board on May 24.
3. We anticipate that the Commission will want the comments of its Advisory Board on the

Voter ID report before it receives it in June. (Indeed, we were advised that the Advisory Board members would be most interested in the accuracy of observations or findings specific to their individual states.)

4. The appropriate conclusion for our work is a presentation of findings and recommendations for both Provisional Voting and Voter ID, 2 closely related topics, to the Commission at its public meeting in late June, just a week before the termination of our contract under the extended schedule.

I hope you'll share this outline of our expectations with the others at the Commission involved in assuring a successful completion of this research and analysis.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, April 27, 2006 3:08 PM
To:[redacted]twilkey@eac.gov; jthompsonhodgkins@eac.gov
Cc: foley.33@osu.edu; john.weingart@rutgers.edu; [redacted] tokaji.1@osu.edu
Subject: RE: Schedule for completion of Prov. Voting and Voter ID research

Tom-

I am certain the provisional voting paper will be presented. The Chairman has asked that the Commissioners have an opportunity to review your corrected and final draft of that document prior to it being presented to the EAC Boards, preferably next week.

Because of the issues surrounding voter identification, I am less certain about the protocol that will be followed. I will ask Tom Wilkey and Julie Hodgkins to offer insights on that matter.

I will also ask them about the protocol to be followed regarding the formal submission and acceptance of both the papers.

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

"Tom O'neill" [redacted]

04/27/2006 10:26 AM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, tokaji.1@osu.edu, foley.33@osu.edu, [redacted]
Subject RE: Schedule for completion of Prov. Voting and Voter ID research

Karen,

Thanks for your quick reply.

Am I correct in understanding that the presentation to the Board of Advisors on May 24 will include both the Provisional Voting report and the Voter ID report?

If the Commissioners do not consider the reports at its June meeting, when will it take action to receive and record the reports?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, April 27, 2006 9:50 AM
To: [redacted]
Cc: john.weingart@rutgers.edu
Subject: Re: Schedule for completion of Prov. Voting and Voter ID research

Tom-

Just had a good conversation with our folks in the legal department, who as you know, are responsible for coordinating our public meetings.

Original plans had slotted Eagleton for the presentation of its final reports on provisional voting and voter id, at a June public meeting. Those plans have been revised to have Eagleton, instead, present its findings to the EAC Board of Advisors and Standards Board on May 24th.

The details of the Board of Advisors and Standards Board meetings are being finalized this week and early next. I will be certain to get your more details, as I learn of them.

Also, I will get you the details on who will provide the EAC peer review of the Voter ID work, as soon as I have them.

Regards-

(back Karen Lynn-Dyson
Research Manager

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

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:54 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: No-Cost Extension Request

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:52 AM -----

Tamar Nedzar/EAC/GOV
04/21/2006 03:30 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Fw: No-Cost Extension Request

Ooops. Here's the attachment.

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

Rutgers Memo.rtf

----- Forwarded by Tamar Nedzar/EAC/GOV on 04/21/2006 03:28 PM -----

Tamar Nedzar/EAC/GOV
04/21/2006 03:13 PM

To Karen Lynn-Dyson/EAC/GOV
cc
Subject Re: No-Cost Extension Request

Hey Karen,

Once John signs and faxes back the document, we need to get it to Tom with the memo to file (attached) for his signature. I believe that is all we need to do for the no-cost modification.

Thanks,

Tamar Nedzar
Law Clerk

U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
04/21/2006 10:10 AM

To john.weingart@rutgers.edu
cc "Tom O'Neill" [redacted]
Subject Re: No-Cost Extension Request

Thanks, John.

I'm passing this on to our legal staff, who will be preparing the documents.

Will let you know if I need additional information and/or clarification.

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

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
04/21/2006 09:52 AM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'Neill" [redacted]
Subject No-Cost Extension Request

Karen - We are requesting a no-cost extension on the EAC contract to the Eagleton Institute of Politics at Rutgers University to have the contract's concluding date move from March 31, 2006 to June 30, 2006. As I indicated earlier, it would be very helpful if we could receive approval of this request no later than April 28th.

This extension is necessary to enable the following activities:

1. The EAC has informed us that it will assemble a panel of researchers the week of May 8th to review the Eagleton/Moritz draft background report on Voter Identification. The EAC wishes to supplement the review of this draft
already conducted by the Peer Review Group called for in the contract. The Eagleton/Moritz research team, as well as at least some of the Peer Review Group will participate in the conference call or meeting of the

EAC's reviewers;

2. Eagleton/Moritz will revise the draft Voter Identification report based upon comments made by the two sets of reviewers, and distribute the revised report to the EAC and its Advisory Board in mid-May.

3. Eagleton/Moritz will present its draft reports on Provisional Voting and Voter Idenfitication to the EAC Advisory Board at its May 25th meeting in Washington, D.C.;

4. Eagleton/Moritz will revise both draft reports to take into account comments made by the EAC Advisory Board, and submit printed final reports to the EAC before June 23rd. Eagleton/Moritz will also prepare a PowerPoint presentation for both reports.

5. Eagleton/Moritz will present both reports at the EAC public meeting in Washington, D.C. on June 23rd, thus concluding its work under this contract.

Please let me know if you need any additional information.

Thanks,

John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:53 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject label this EAC Peer Review panel for Eagleton research study

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:51 AM -----

"Mike Alvarez"
<rma@hss.caltech.edu>
04/05/2006 07:39 PM

To klynndyson@eac.gov
cc
Subject

Hi -- nice to meet you in person, finally!

And thanks for inviting me to your gathering, I enjoyed it and hope I was helpful. Of course, any time you want anything, you do know where to track me down.

As to the potential reviewers of the Eagleton Voter ID study, here are my suggestions, in order:
Jonathan Nagler, New York University
Jan Leighley, University of Arizona
Ben Highton, UC-Davis
Adam Berinsky, MIT
Bernard Grofman, UC-Irvine

All have worked with the CPS turnout/registration data, and are very familiar with this research literature.

If these don't work, or you want more recommendations, let me know.

--
****
R. Michael Alvarez (O)
626-395-4089
Professor of Political Science (F)
626-405-9841
Caltech/MIT Voting Technology Project
California Institute of Technology
Pasadena, CA 91125
rma@hss.caltech.edu

Contributor to Election Updates,
http://electionupdates.caltech.edu/blog.html
****

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

To: File
From: Tamar Nedzar, Law Clerk
Date: April 21, 2006
Re: No-Cost Extension to contract number E4014127 with the Eagleton Institute of Politics at Rutgers University

---

Background:
Contract E4014127 with the Eagleton Institute of Politics at Rutgers University ("contractor") was originally scheduled to be concluded on March 31, 2006. The contract's final products include a report on Voter Identification and a report on Provisional Voting. The contractor has vetted the reports with a Peer Review Group, pursuant to the terms of the contract.

Justification for No-Cost Extension:
The EAC wishes to supplement the contractor's Peer Review of the reports by adding another review process with some of the EAC's key stakeholders. The EAC proposes to assemble a panel of researchers during the week of May 8th to conduct the second review.

Following the second review, the contractor will revise its draft reports based on the comments it receives. The contractor will present its draft reports on Provisional Voting and Voter Identification to the EAC Advisory Board at its May 25th meeting in Washington, DC. The contractor will revise both draft reports, taking into account the EAC's Advisory Board's comments and submit the final reports to the EAC toward the end of June.

Recommendation:
The EAC recommends that contract E4014127 be modified at no cost to allow the contractor to complete their work by June 30, 2006.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Powerpoint presentation for EAC

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:50 AM -----

"Tom O'neill"
[redacted]
04/02/2006 11:58 AM

To klynndyson@eac.gov
cc
Subject Powerpoint presentation for EAC

Karen,

Attached is the Powerpoint presentation we will use as the basis for our presentation tomorrow. I will be bringing a copy on a portable drive to install on the computer to be used for the presentation, but thought it might be convenient to have a copy in advance that you could review and that might be loaded onto the presentation computer before we arrive.

See you about 11. Hope you're having (had?) a good weekend.

Tom O'Neill

Briefinfg040306A.ppt

Briefing for

U. S. Election Assistance Commission

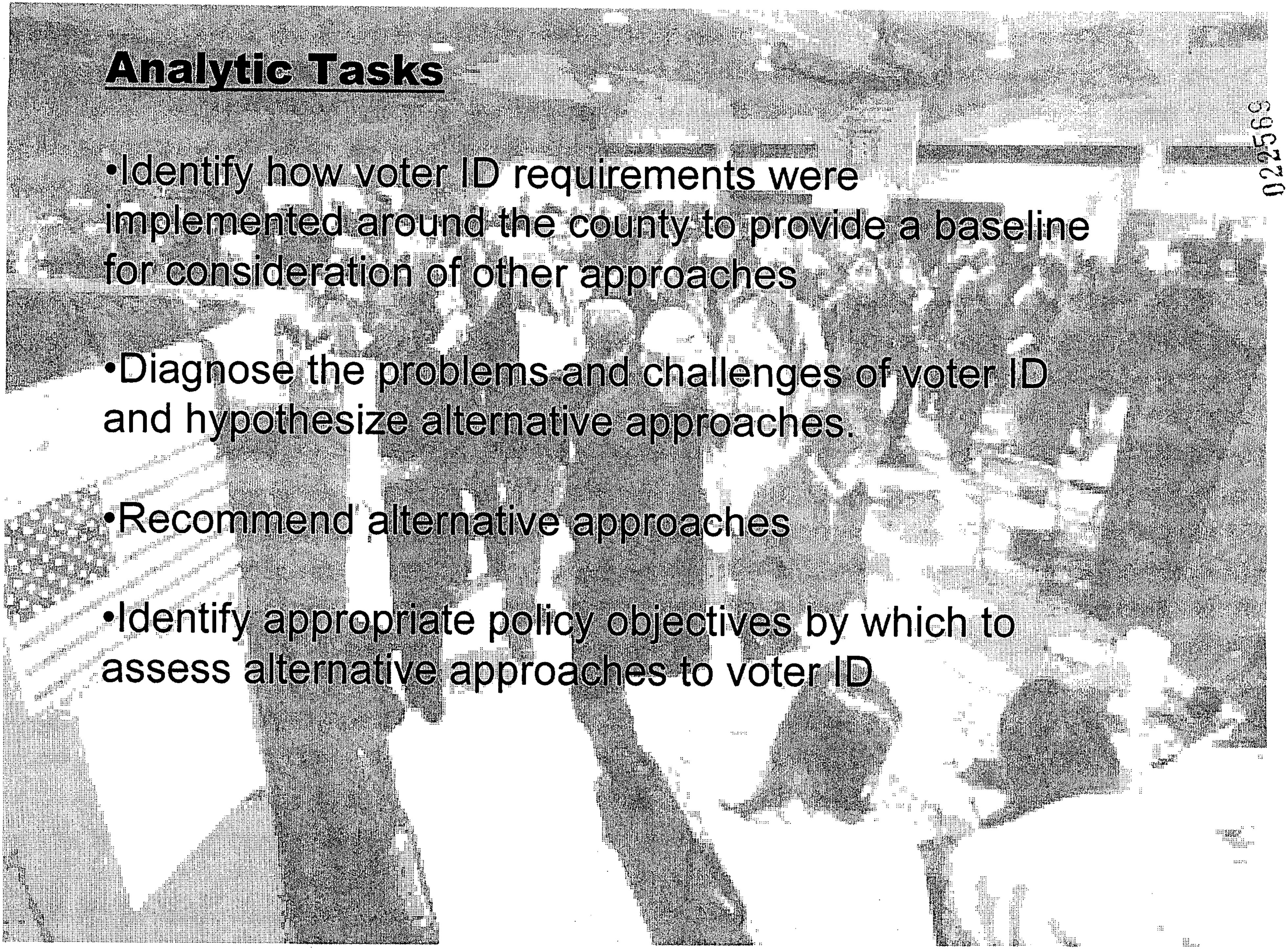
Thomas O'Neill, Project Director
Eagleton Institute of Politics

Dan Tokaji, Assistant Professor of Law
Moritz College of Law,

Tim Vercellotti, Assistant Research Professor
Eagleton Institute of Politics

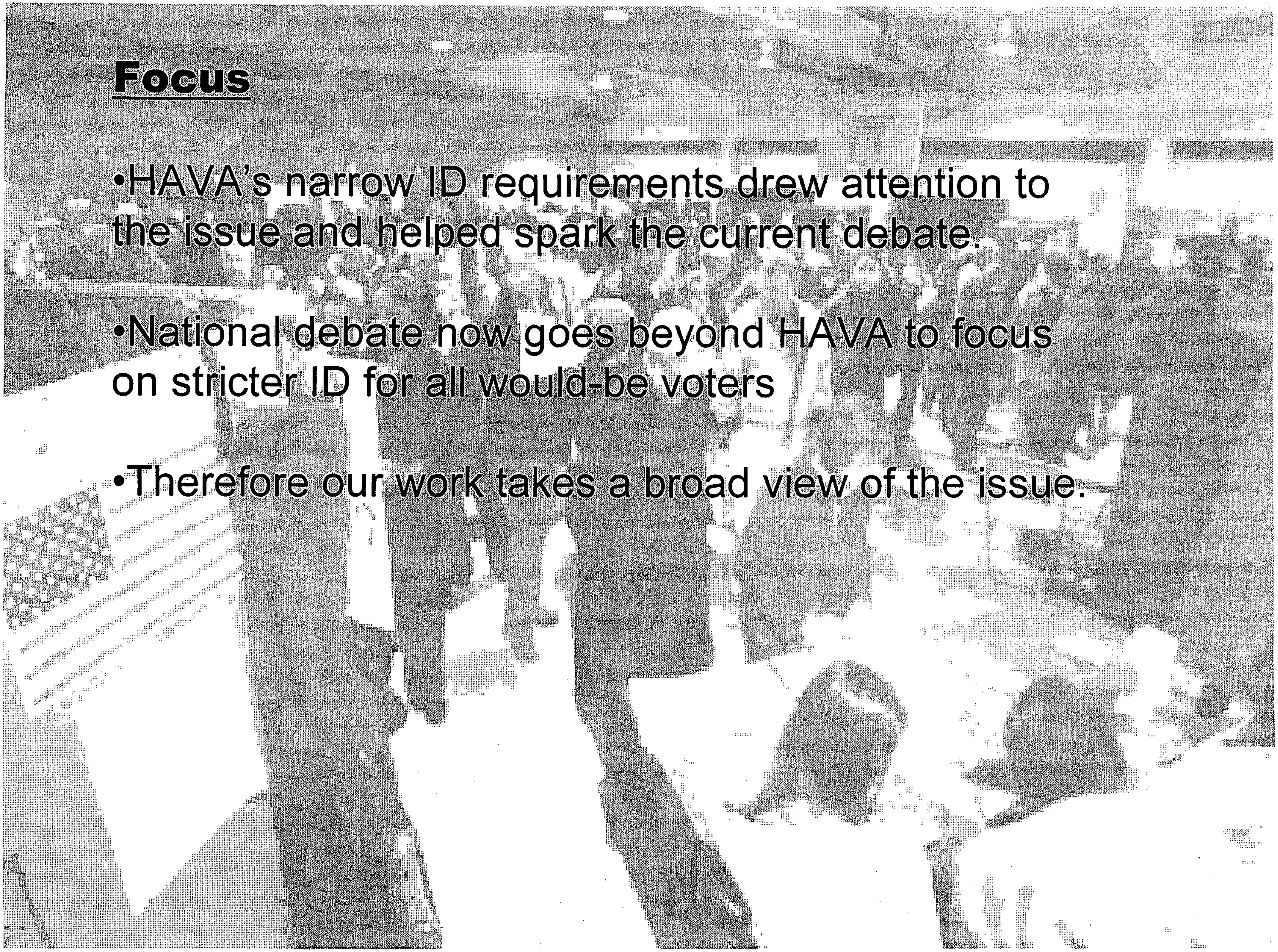
April 3, 2006

Voter Identification Issues
Analysis
&
Recommendations



Analytic Tasks

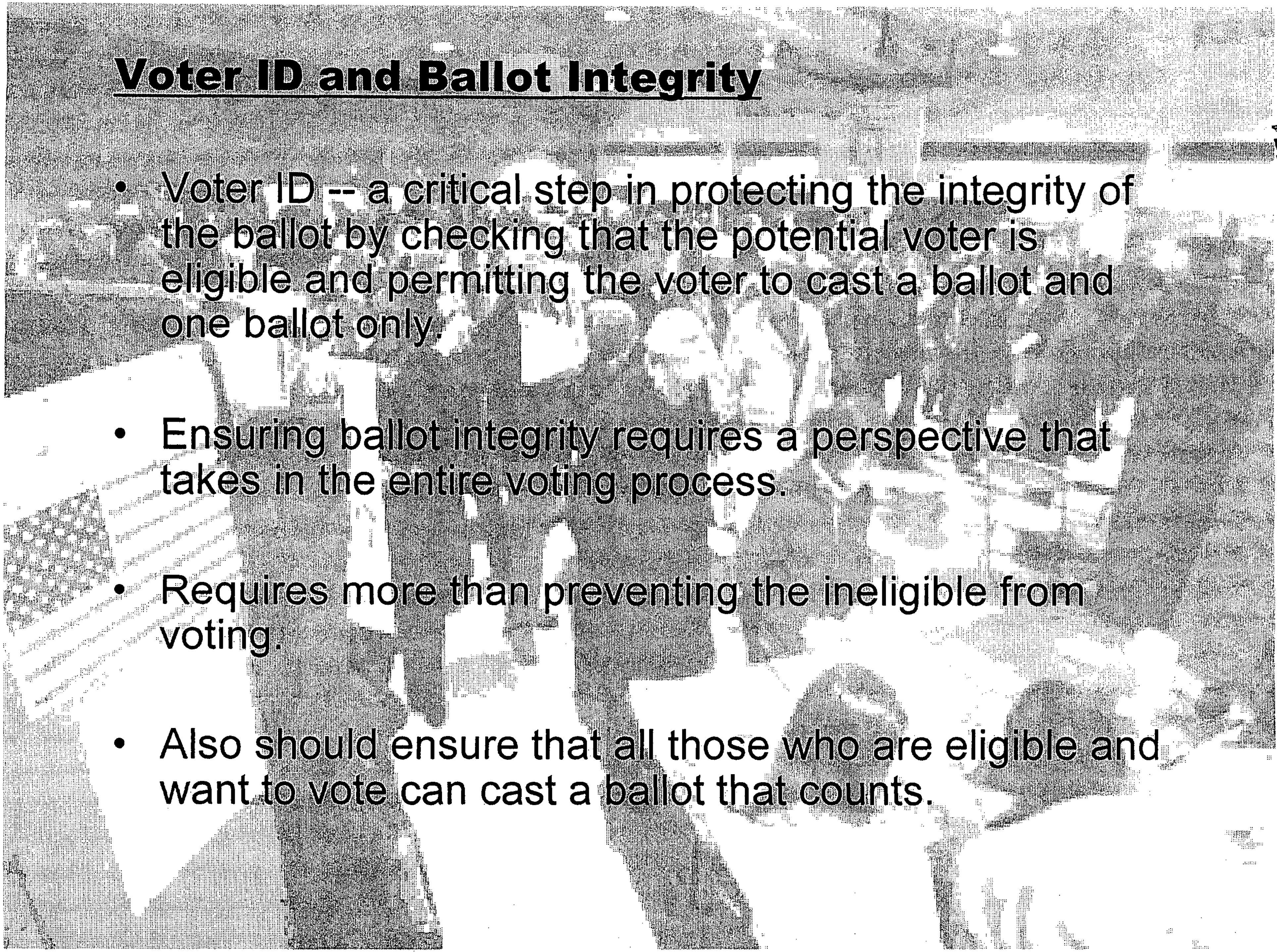
- Identify how voter ID requirements were implemented around the county to provide a baseline for consideration of other approaches
- Diagnose the problems and challenges of voter ID and hypothesize alternative approaches.
- Recommend alternative approaches
- Identify appropriate policy objectives by which to assess alternative approaches to voter ID



Focus

- HAVA’s narrow ID requirements drew attention to the issue and helped spark the current debate.
- National debate now goes beyond HAVA to focus on stricter ID for all would-be voters
- Therefore our work takes a broad view of the issue.

Voter ID and Ballot Integrity



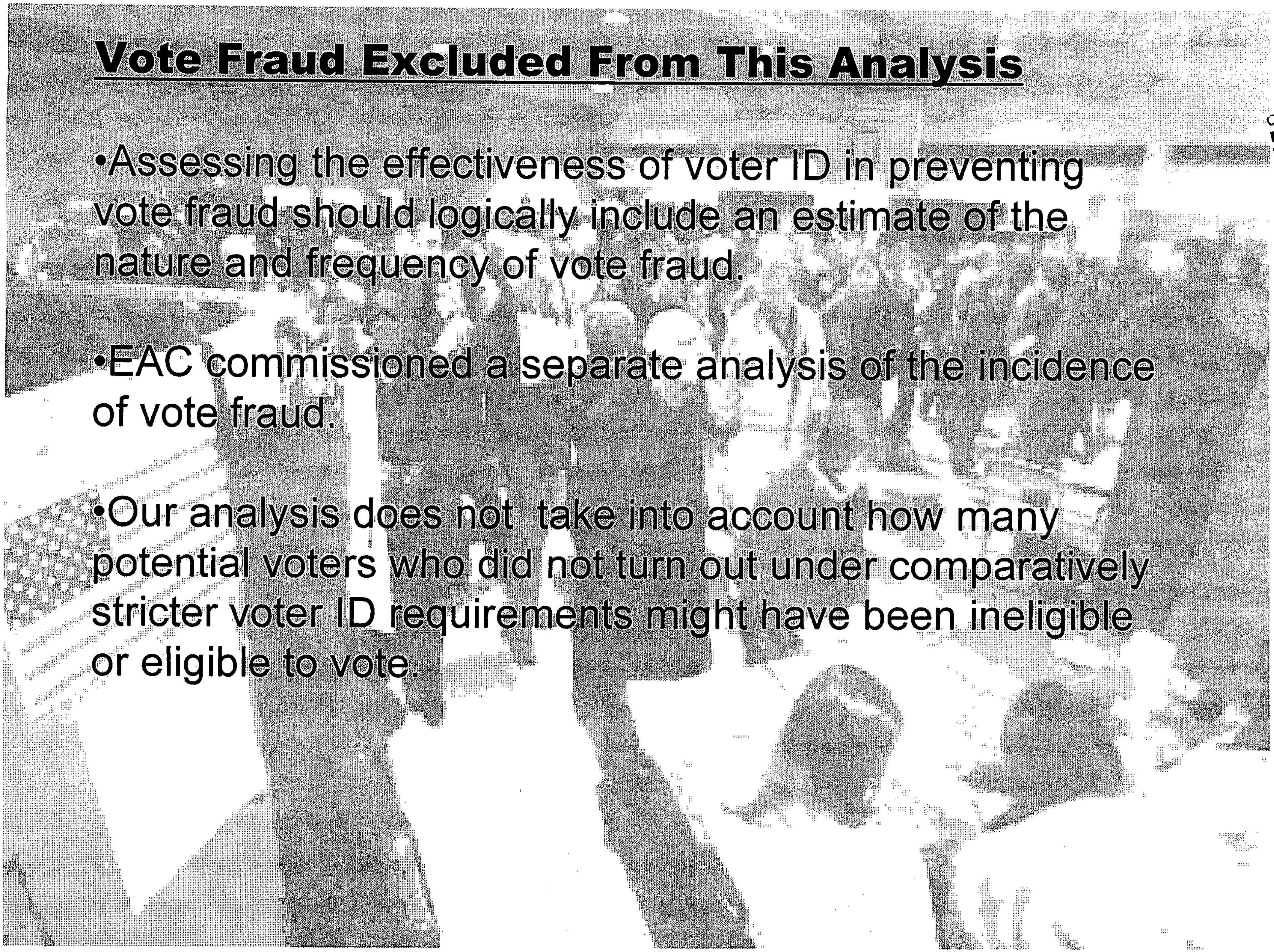
- Voter ID -- a critical step in protecting the integrity of the ballot by checking that the potential voter is eligible and permitting the voter to cast a ballot and one ballot only.

- Ensuring ballot integrity requires a perspective that takes in the entire voting process.

- Requires more than preventing the ineligible from voting.

- Also should ensure that all those who are eligible and want to vote can cast a ballot that counts.

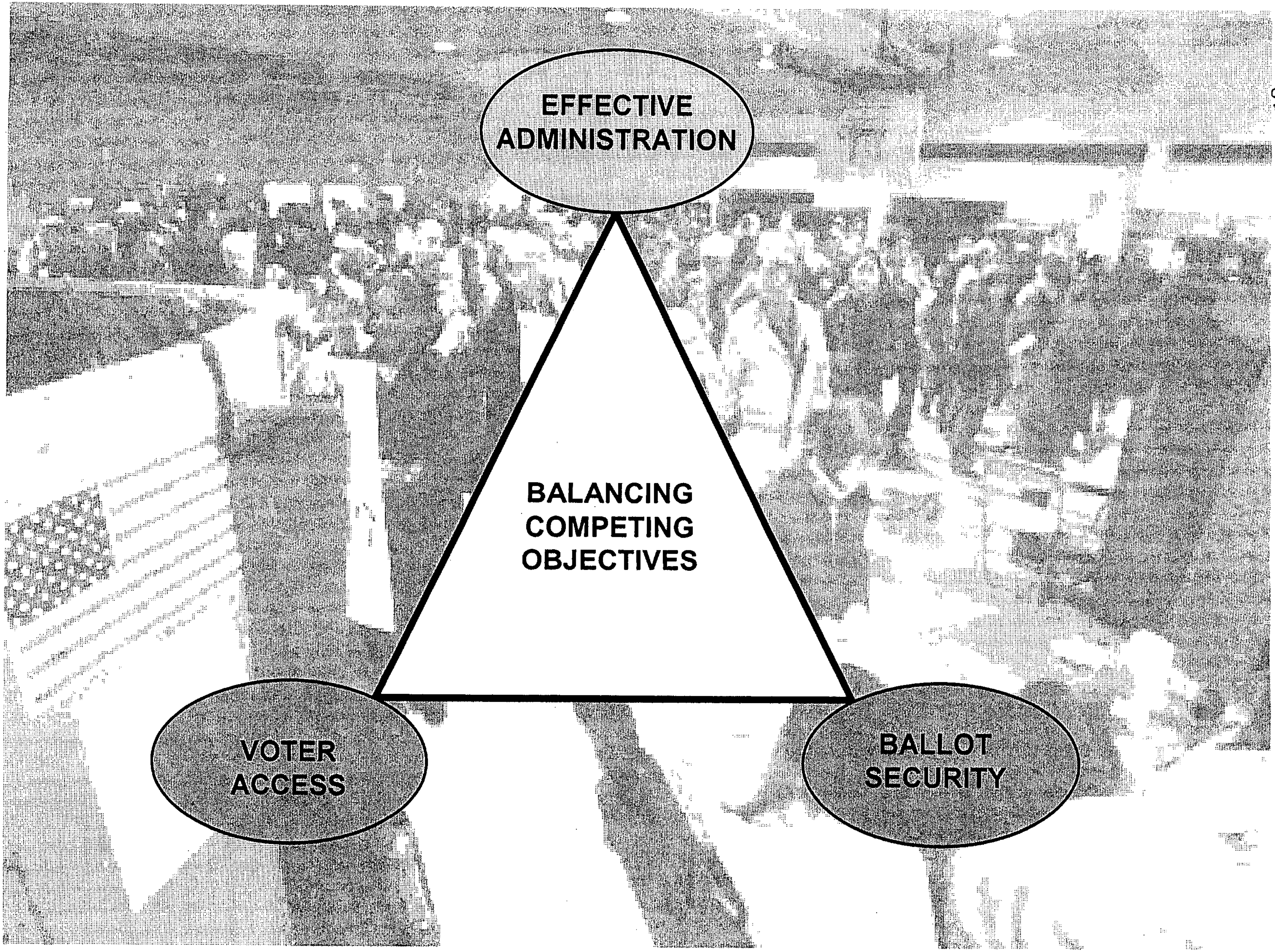
Vote Fraud Excluded From This Analysis



- Assessing the effectiveness of voter ID in preventing vote fraud should logically include an estimate of the nature and frequency of vote fraud.

- EAC commissioned a separate analysis of the incidence of vote fraud.

- Our analysis does not take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

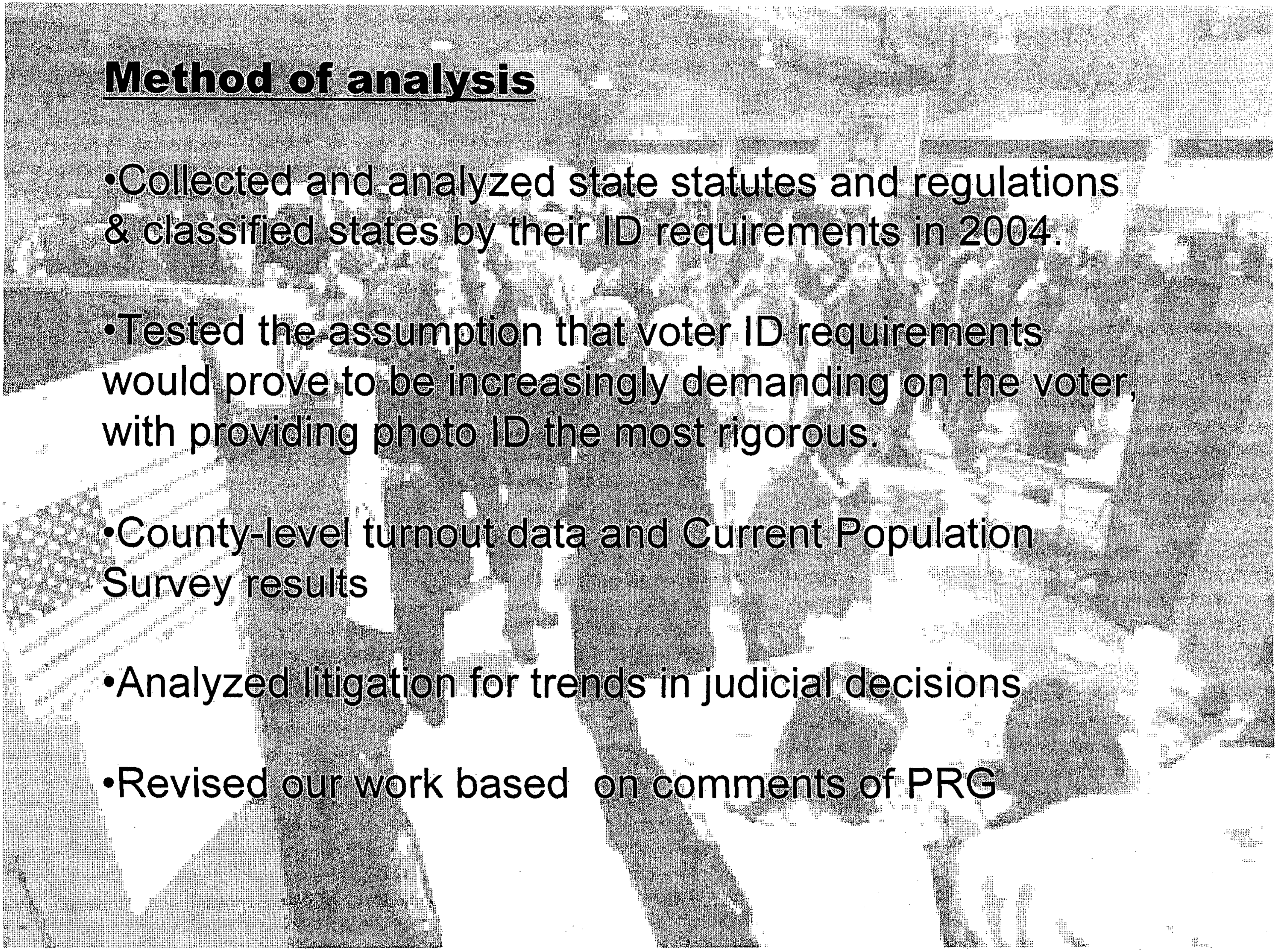


EFFECTIVE ADMINISTRATION

BALANCING COMPETING OBJECTIVES

VOTER ACCESS

BALLOT SECURITY



Method of analysis

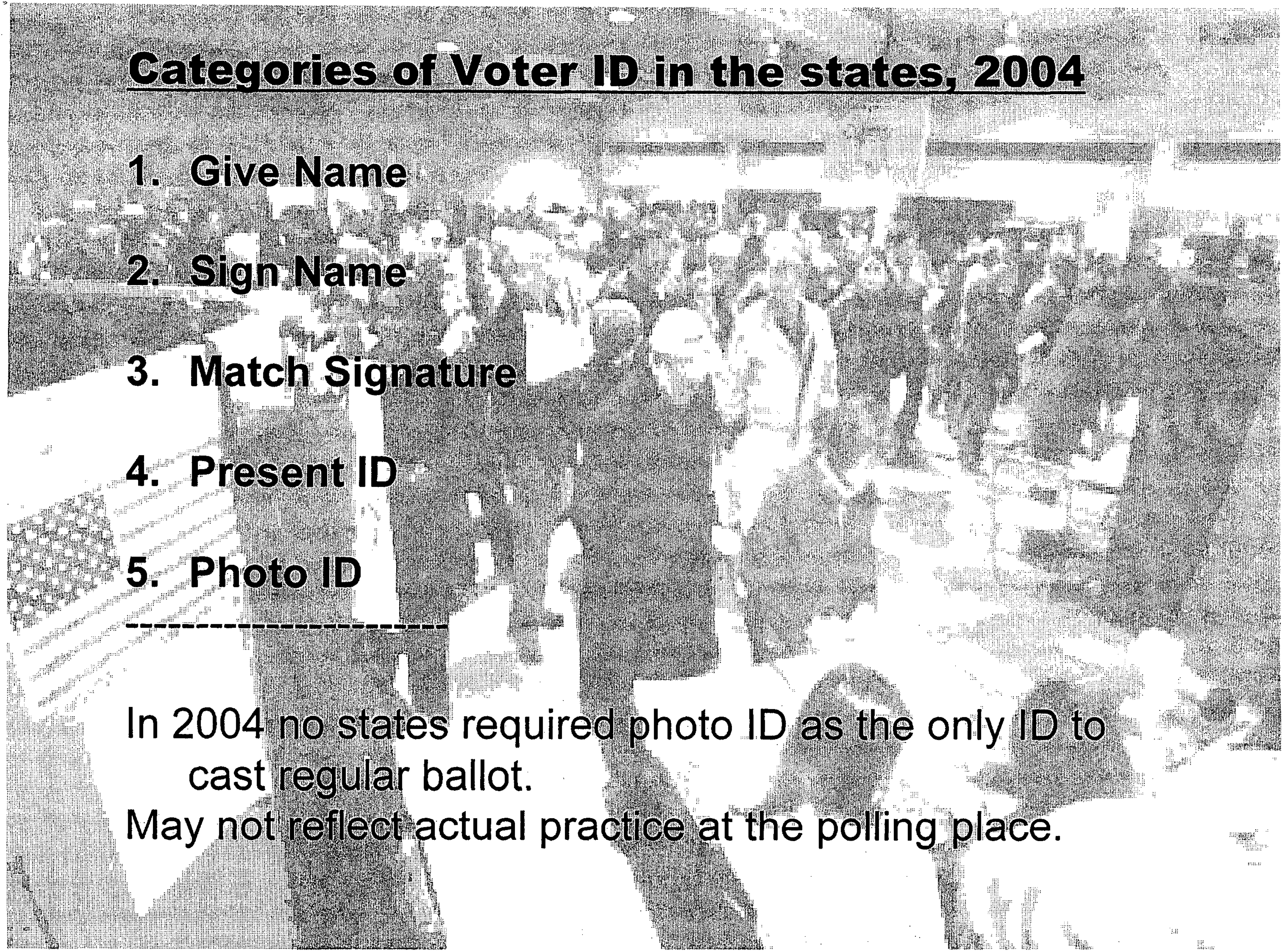
- Collected and analyzed state statutes and regulations & classified states by their ID requirements in 2004.

- Tested the assumption that voter ID requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous.

- County-level turnout data and Current Population Survey results

- Analyzed litigation for trends in judicial decisions

- Revised our work based on comments of PRG



Categories of Voter ID in the states, 2004

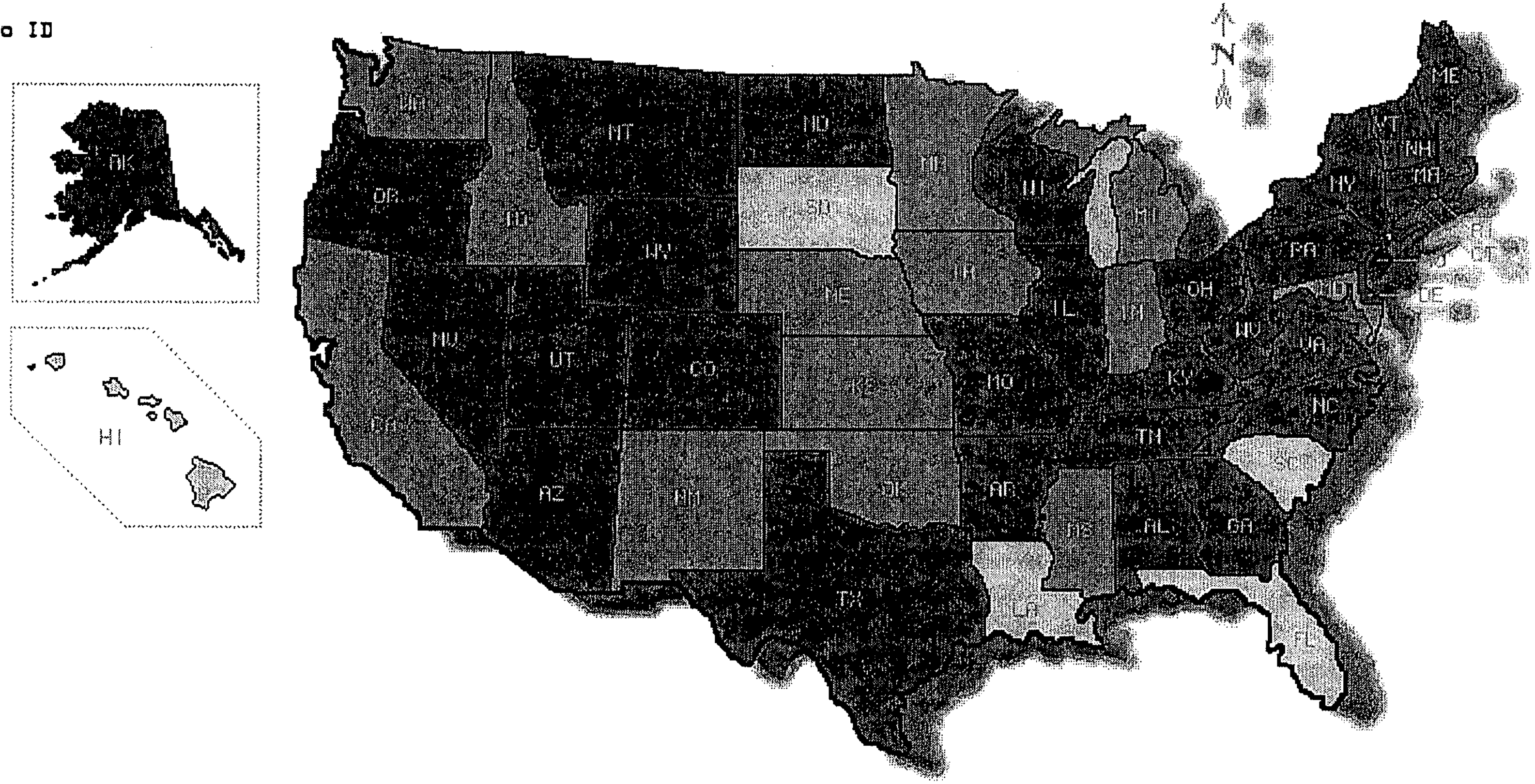
1. **Give Name**
2. **Sign Name**
3. **Match Signature**
4. **Present ID**
5. **Photo ID**

In 2004 no states required photo ID as the only ID to cast regular ballot.

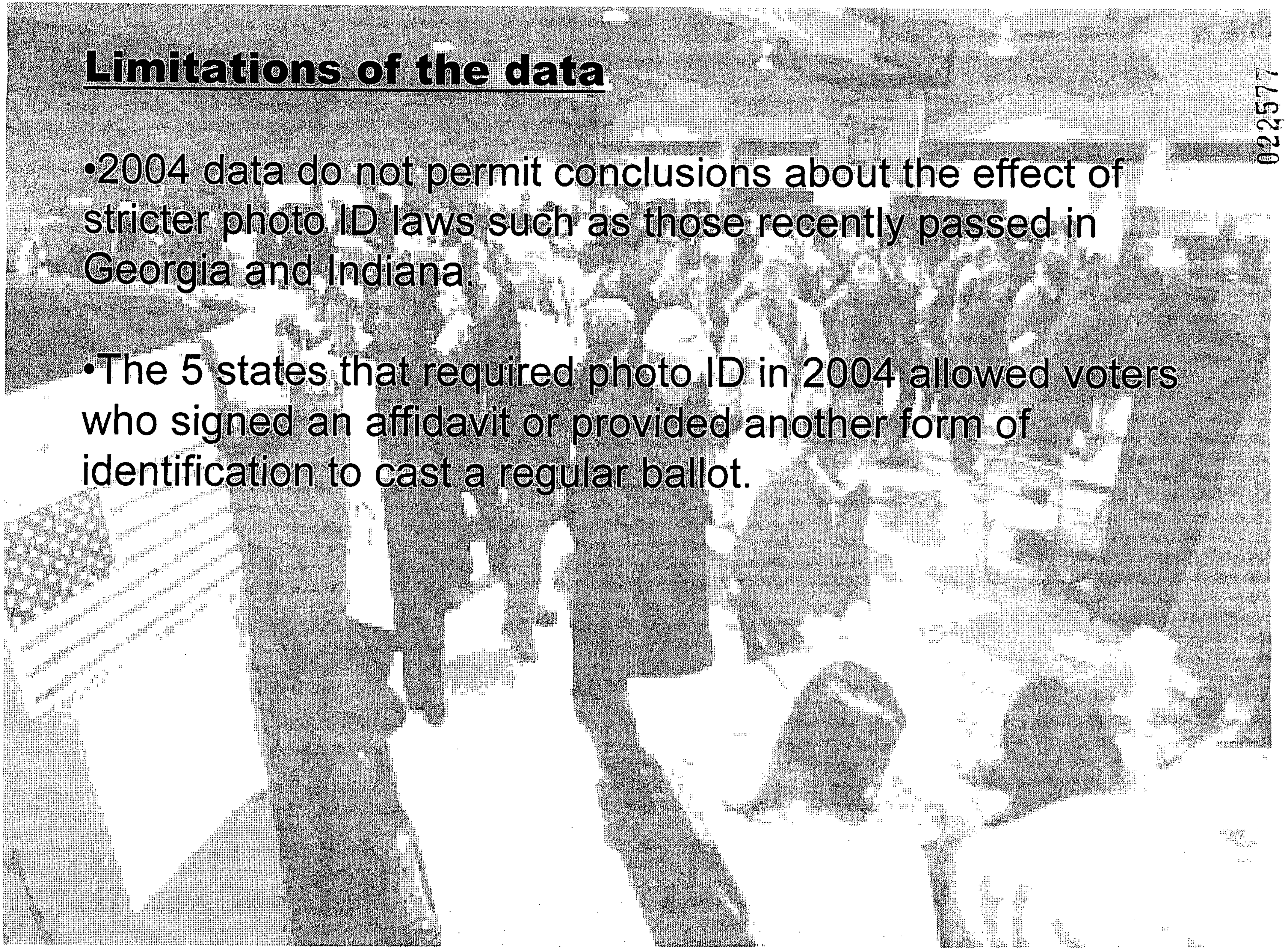
May not reflect actual practice at the polling place.

● - Give Name
● - Sign Name
● - Match Signature
● - ID
● - Photo ID

Voter ID Requirements 2004



3-27-06



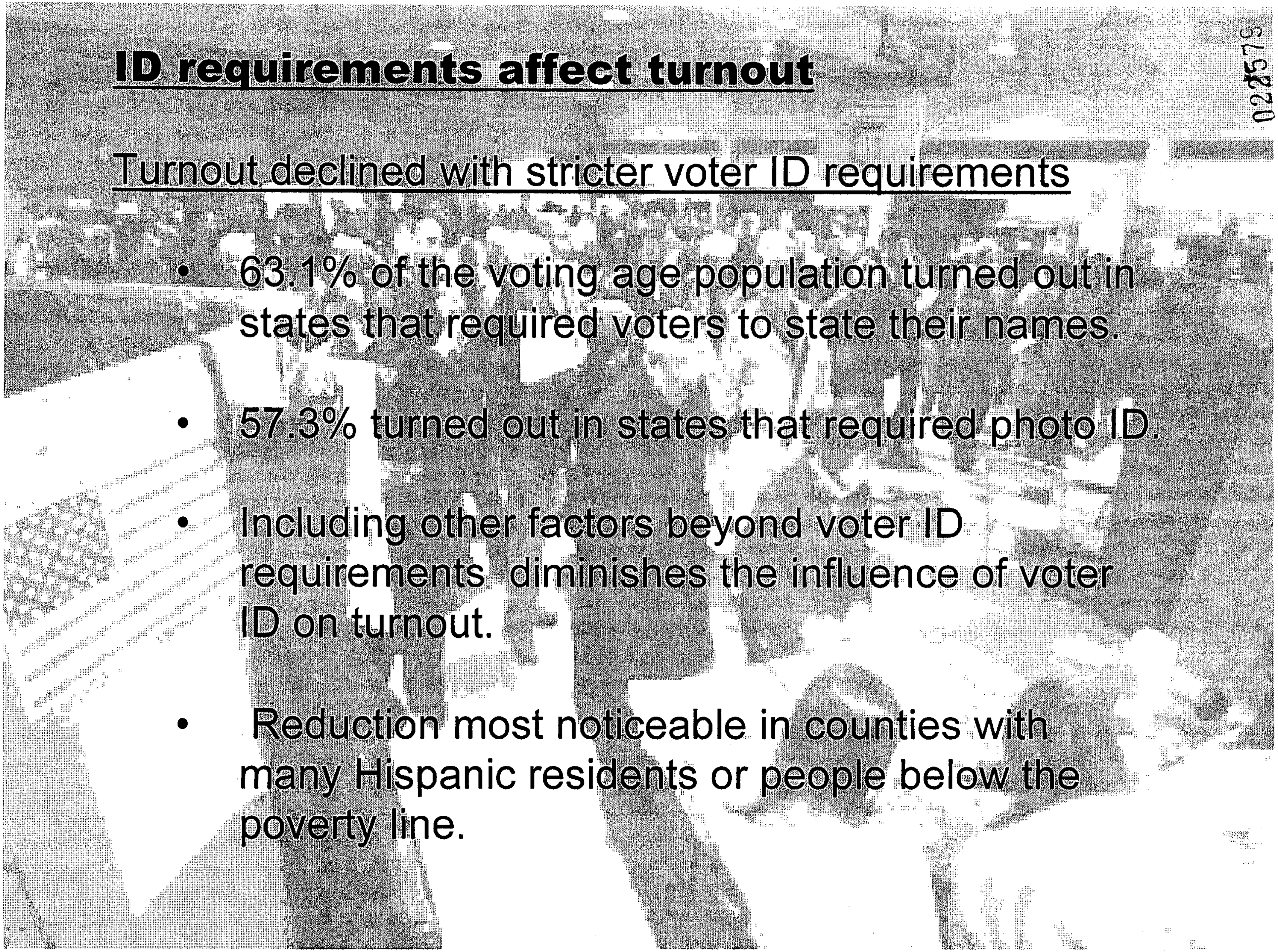
Limitations of the data

- 2004 data do not permit conclusions about the effect of stricter photo ID laws such as those recently passed in Georgia and Indiana.

- The 5 states that required photo ID in 2004 allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

Analysis of Turnout and Voter ID Requirements

Tim Vercellotti

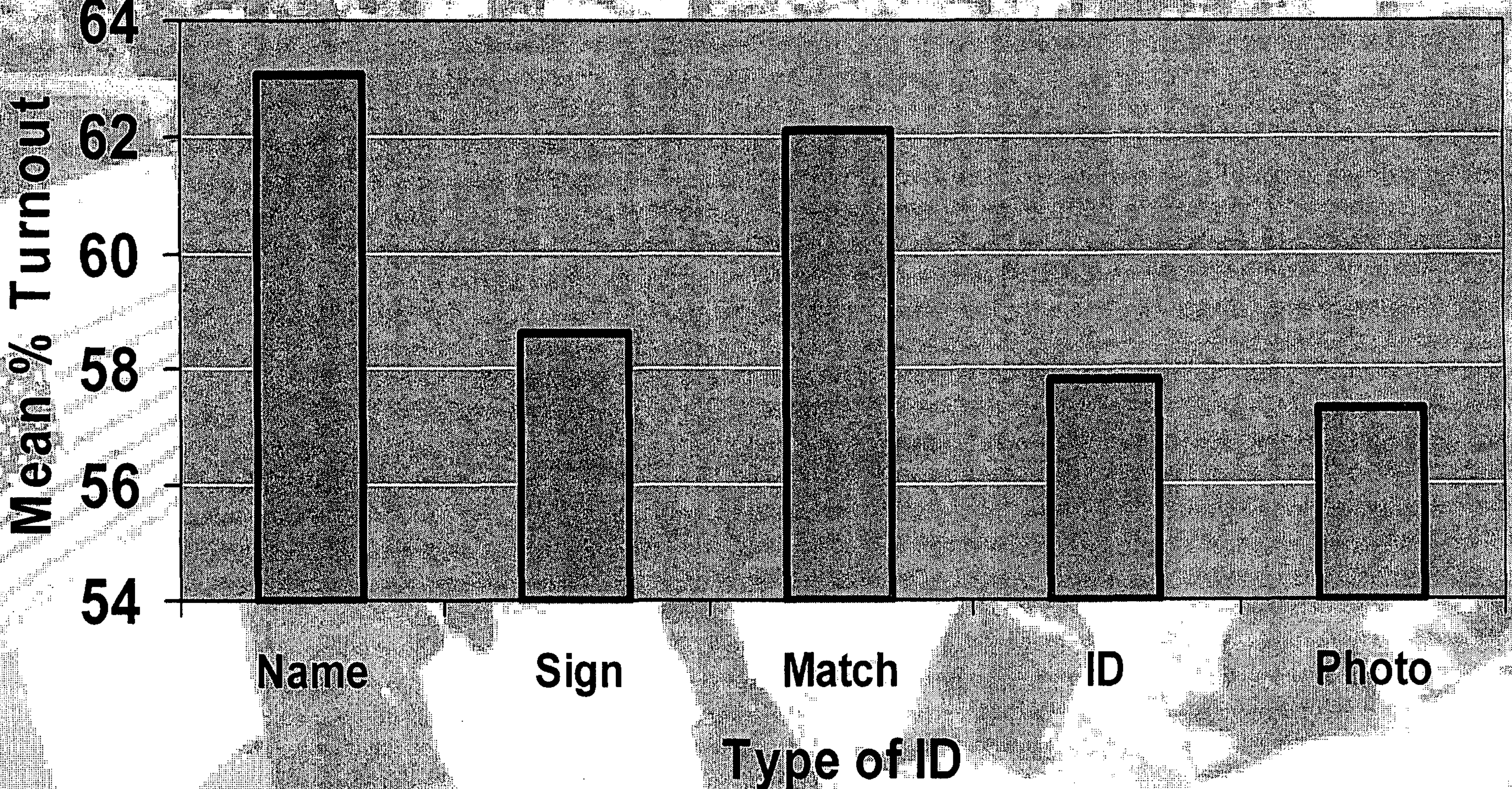


ID requirements affect turnout

Turnout declined with stricter voter ID requirements

- 63.1% of the voting age population turned out in states that required voters to state their names.
- 57.3% turned out in states that required photo ID.
- Including other factors beyond voter ID requirements diminishes the influence of voter ID on turnout.
- Reduction most noticeable in counties with many Hispanic residents or people below the poverty line.

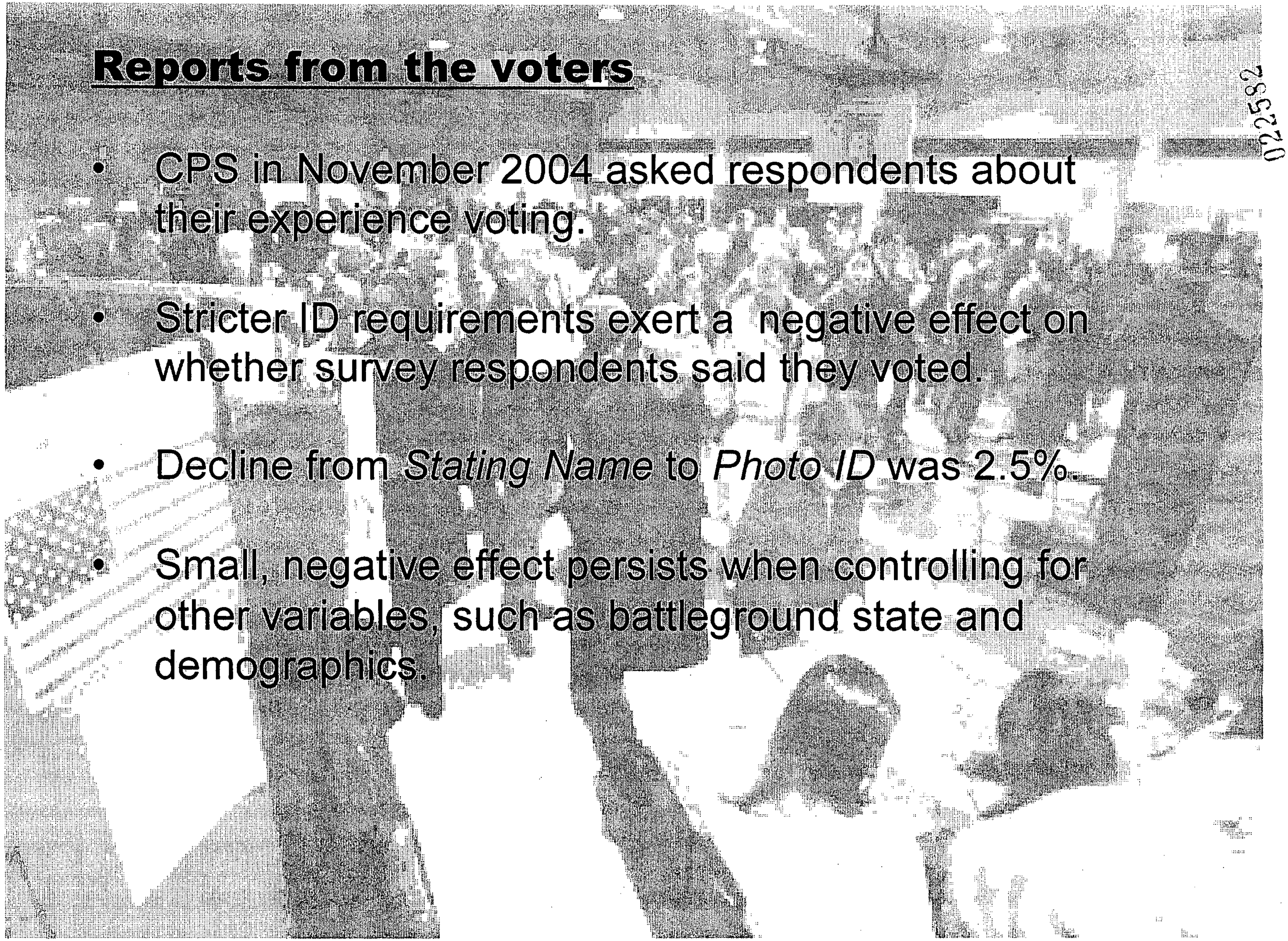
State Voter ID and Turnout



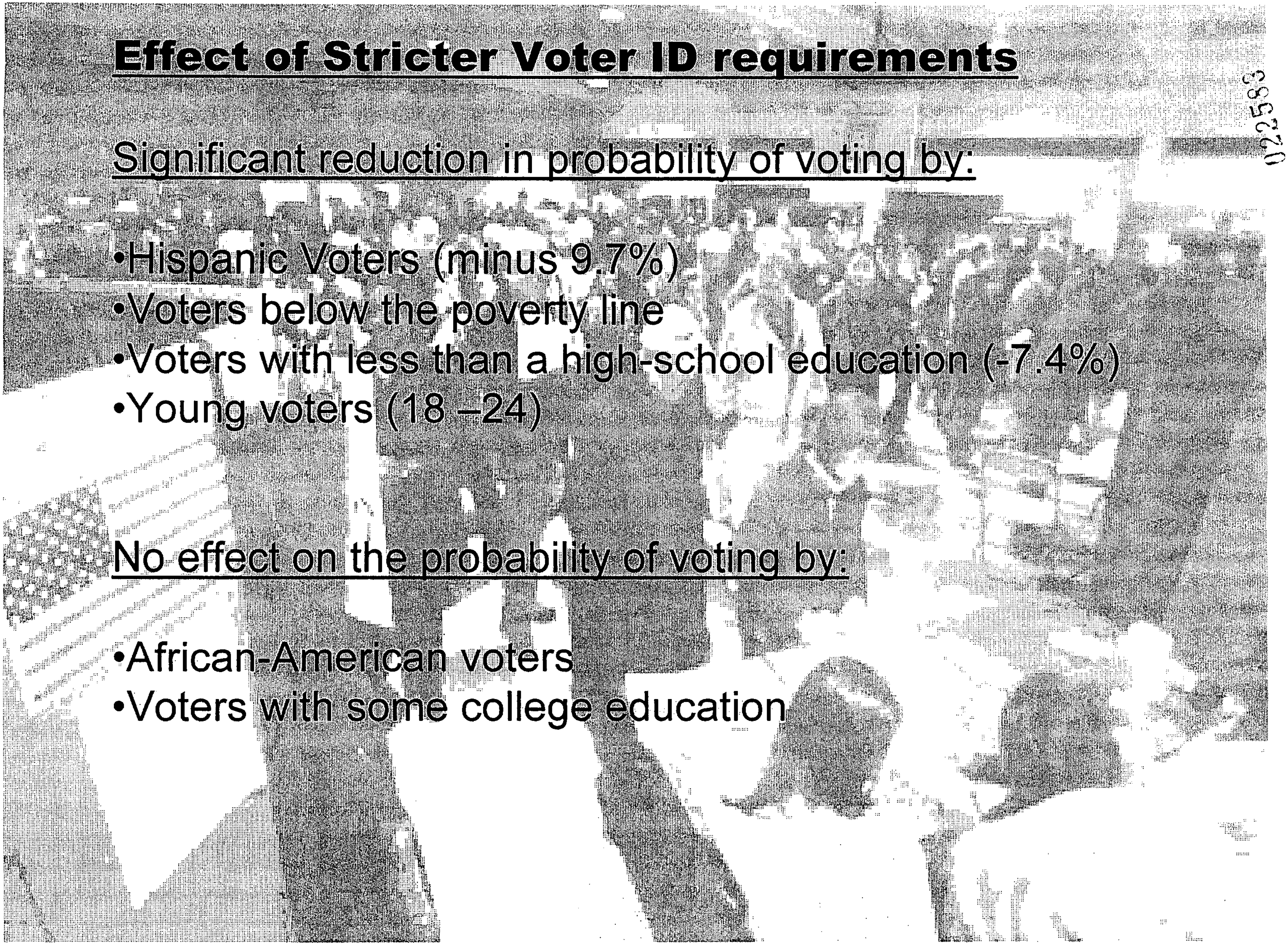
Variation in Turnout Based on Voter ID Requirements

Maximum Requirement		*Minimum Requirement*	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	*Voter Identification Required in the States*	*Mean Voter Turnout for States in that Category*
State Name	**63.1 %**	*State Name*	**61.3 %**
Sign Name	**58.6 %**	*Sign Name*	**60.4 %**
Match Signature	**62.1 %**	*Match Signature*	**59.2 %**
Provide Non-Photo ID	**57.8 %**	*Provide Non-Photo ID*	**57.6 %**
Provide Photo ID	**57.3 %**	*Swear Affidavit*	**58.7 %**
Average Turnout (All States)	**59.6 %**		

Reports from the voters



- CPS in November 2004 asked respondents about their experience voting.
- Stricter ID requirements exert a negative effect on whether survey respondents said they voted.
- Decline from *Stating Name* to *Photo ID* was 2.5%.
- Small, negative effect persists when controlling for other variables, such as battleground state and demographics.



Effect of Stricter Voter ID requirements

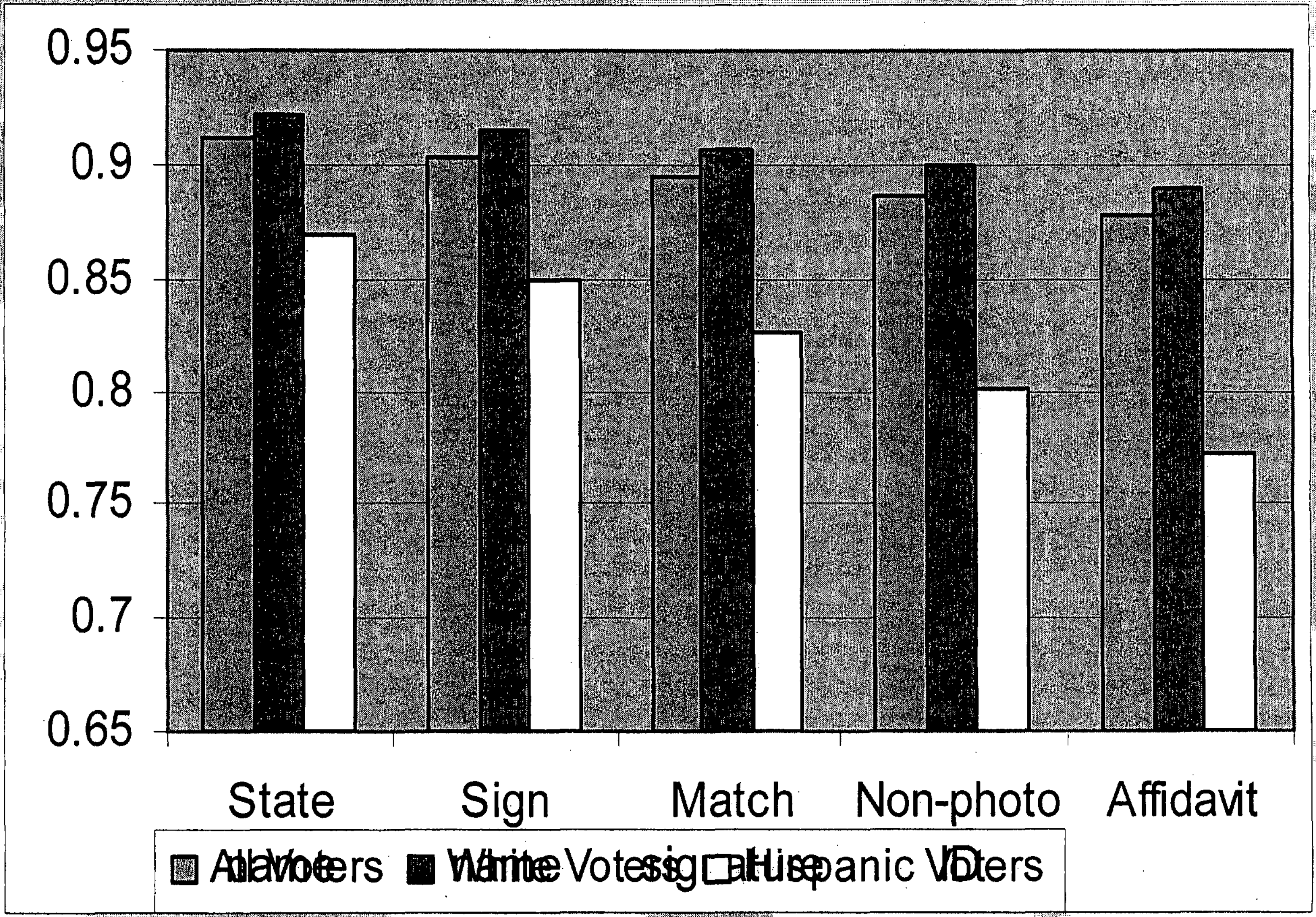
Significant reduction in probability of voting by:

- Hispanic Voters (minus 9.7%)
- Voters below the poverty line
- Voters with less than a high-school education (-7.4%)
- Young voters (18 –24)

No effect on the probability of voting by:

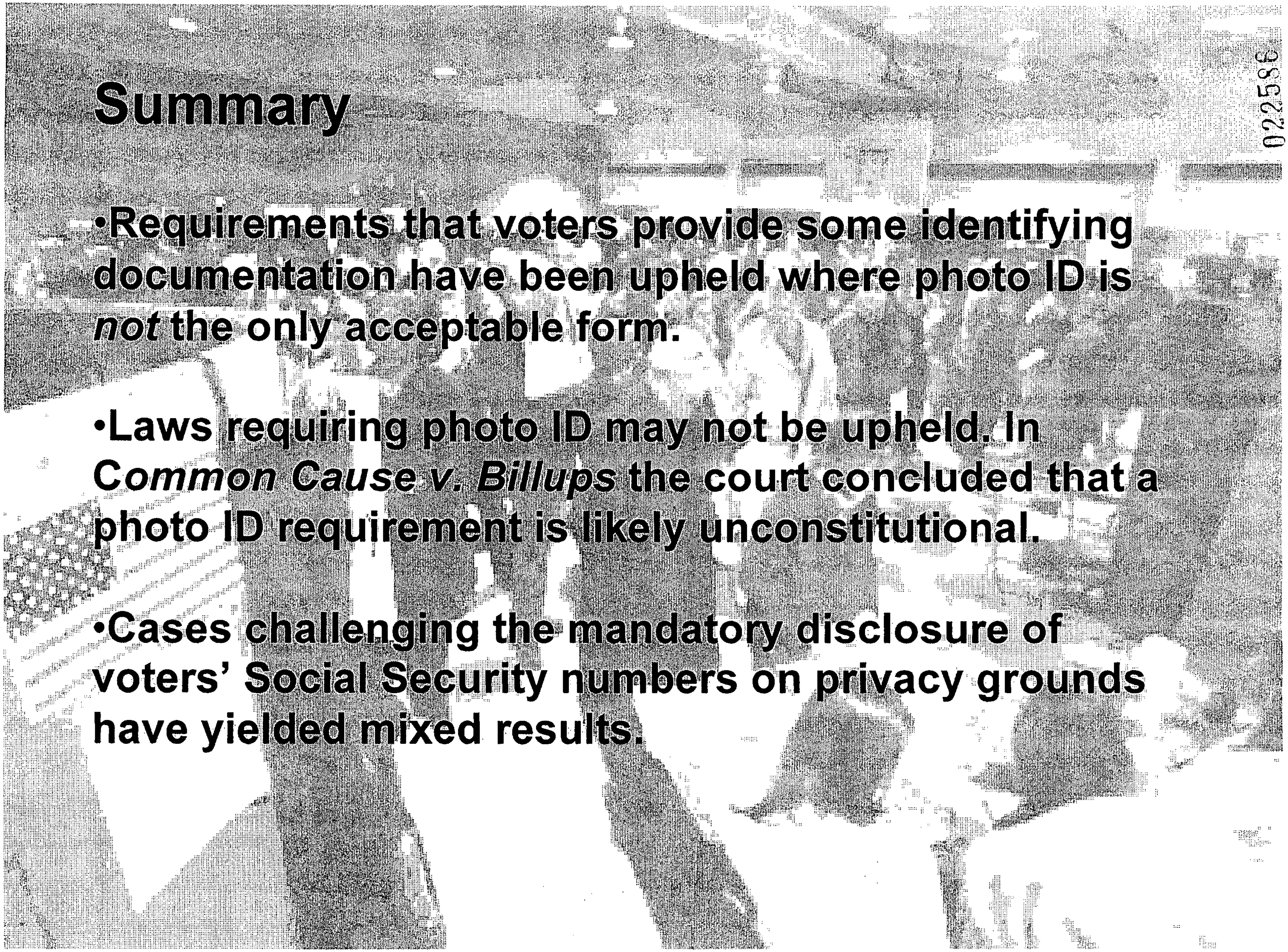
- African-American voters
- Voters with some college education

Voter Turnout By Minimum ID Requirement



Trends in Litigation

Dan Tokaji

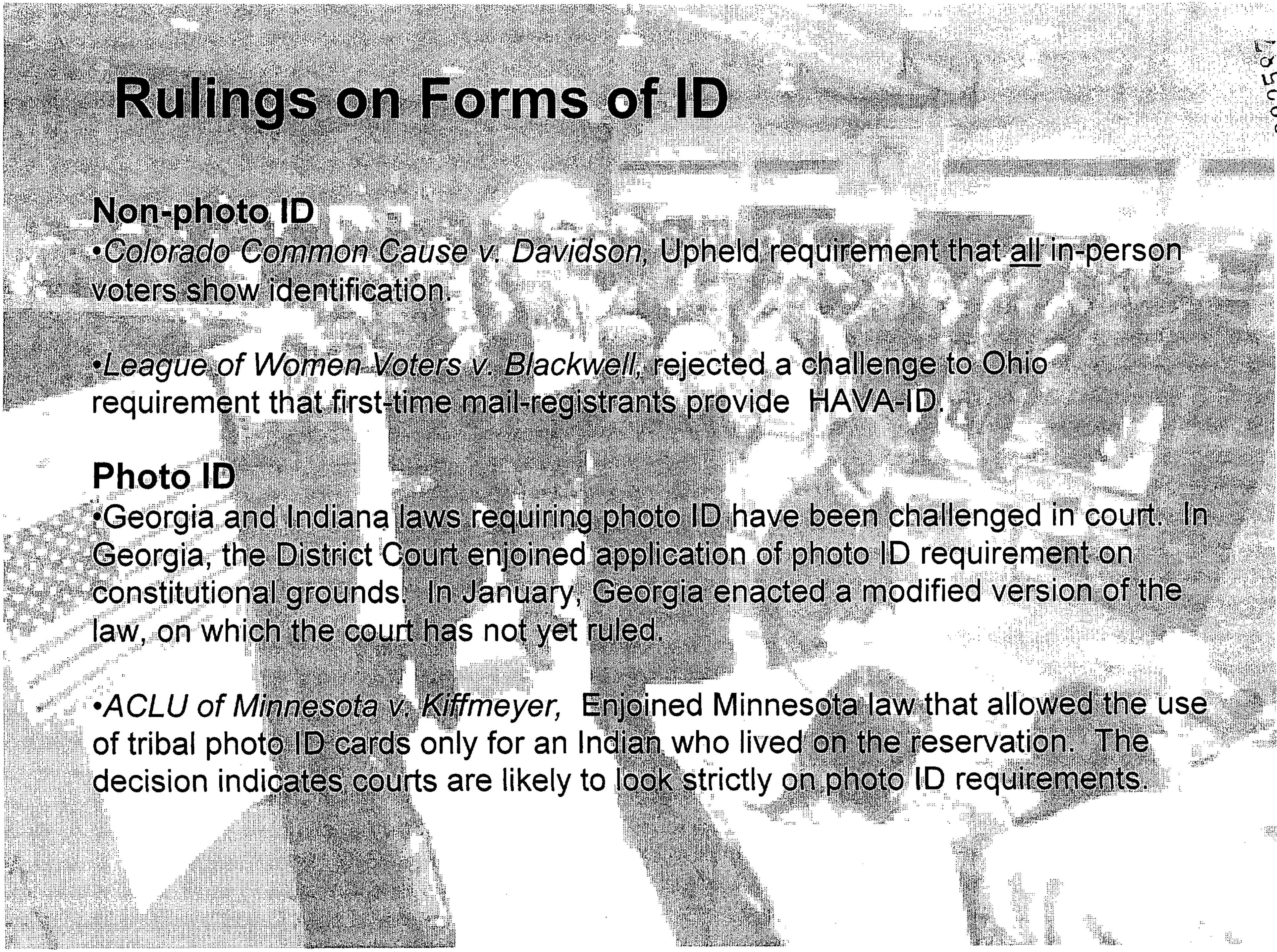


Summary

- Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form.

- Laws requiring photo ID may not be upheld. In *Common Cause v. Billups* the court concluded that a photo ID requirement is likely unconstitutional.

- Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.



Rulings on Forms of ID

Non-photo ID

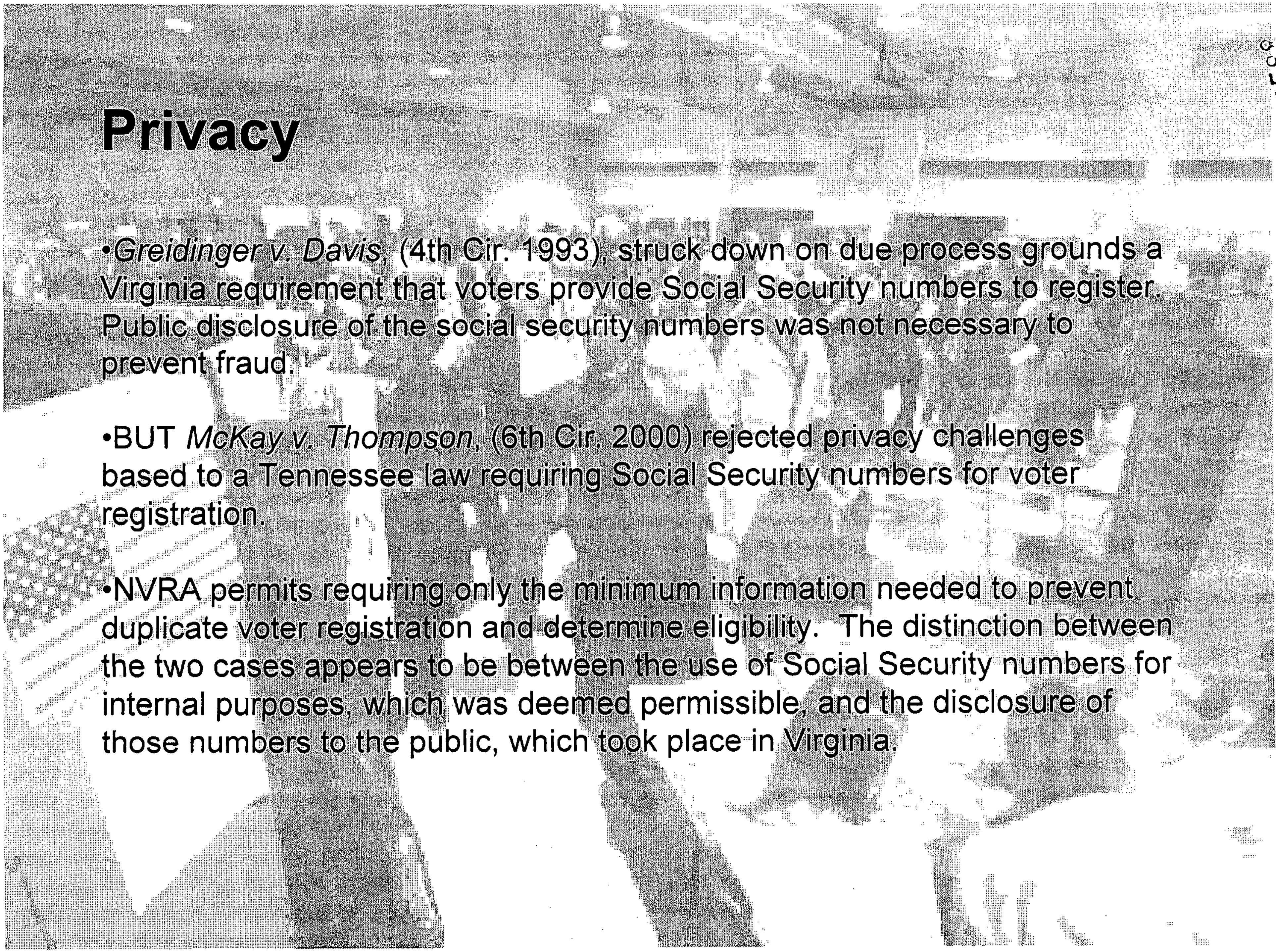
- *Colorado Common Cause v. Davidson,* Upheld requirement that <u>all</u> in-person voters show identification.

- *League of Women Voters v. Blackwell,* rejected a challenge to Ohio requirement that first-time mail-registrants provide HAVA-ID.

Photo ID

- Georgia and Indiana laws requiring photo ID have been challenged in court. In Georgia, the District Court enjoined application of photo ID requirement on constitutional grounds. In January, Georgia enacted a modified version of the law, on which the court has not yet ruled.

- *ACLU of Minnesota v. Kiffmeyer,* Enjoined Minnesota law that allowed the use of tribal photo ID cards only for an Indian who lived on the reservation. The decision indicates courts are likely to look strictly on photo ID requirements.

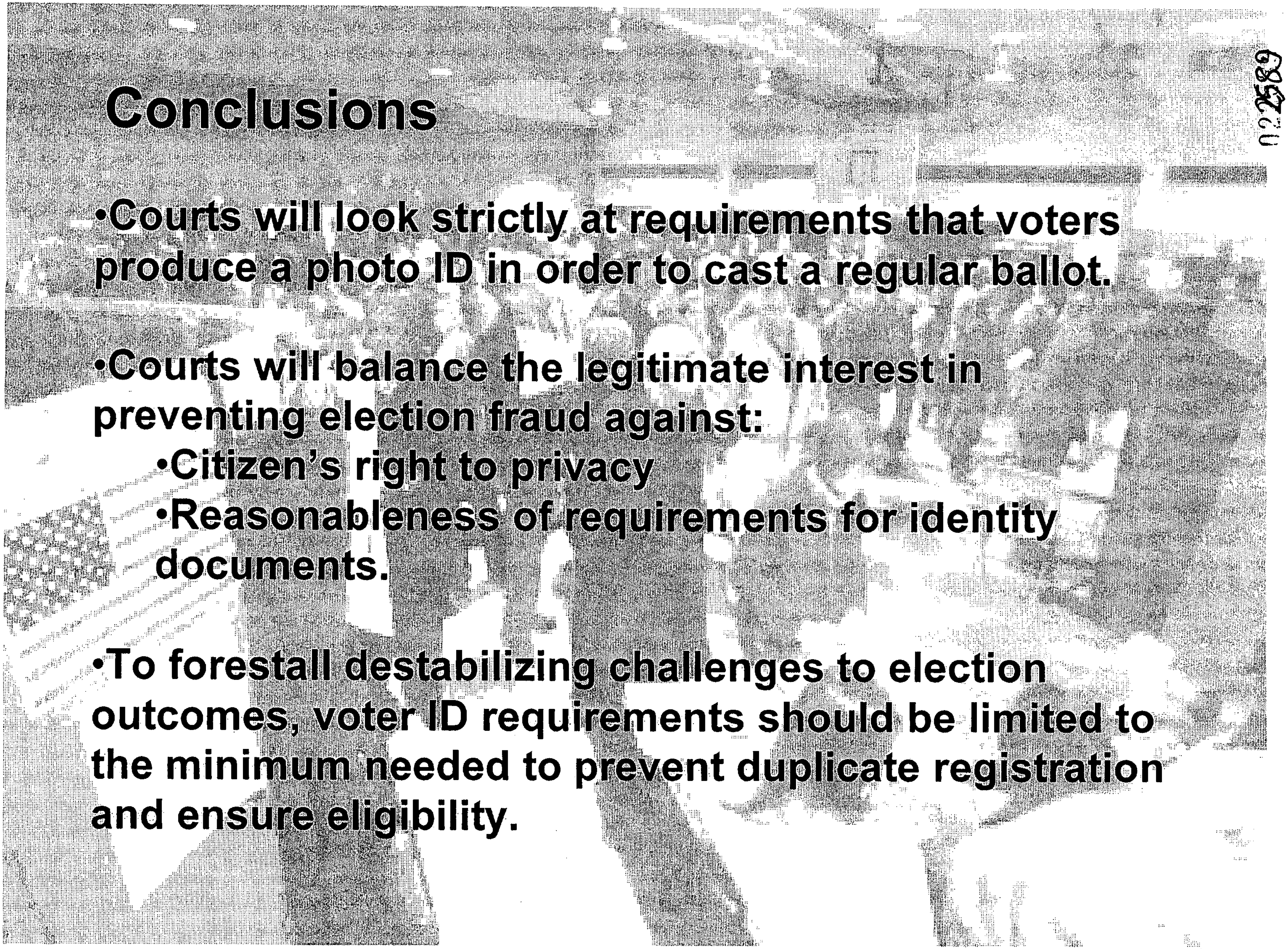


Privacy

- *Greidinger v. Davis*, (4th Cir. 1993), struck down on due process grounds a Virginia requirement that voters provide Social Security numbers to register. Public disclosure of the social security numbers was not necessary to prevent fraud.

- BUT *McKay v. Thompson*, (6th Cir. 2000) rejected privacy challenges based to a Tennessee law requiring Social Security numbers for voter registration.

- NVRA permits requiring only the minimum information needed to prevent duplicate voter registration and determine eligibility. The distinction between the two cases appears to be between the use of Social Security numbers for internal purposes, which was deemed permissible, and the disclosure of those numbers to the public, which took place in Virginia.

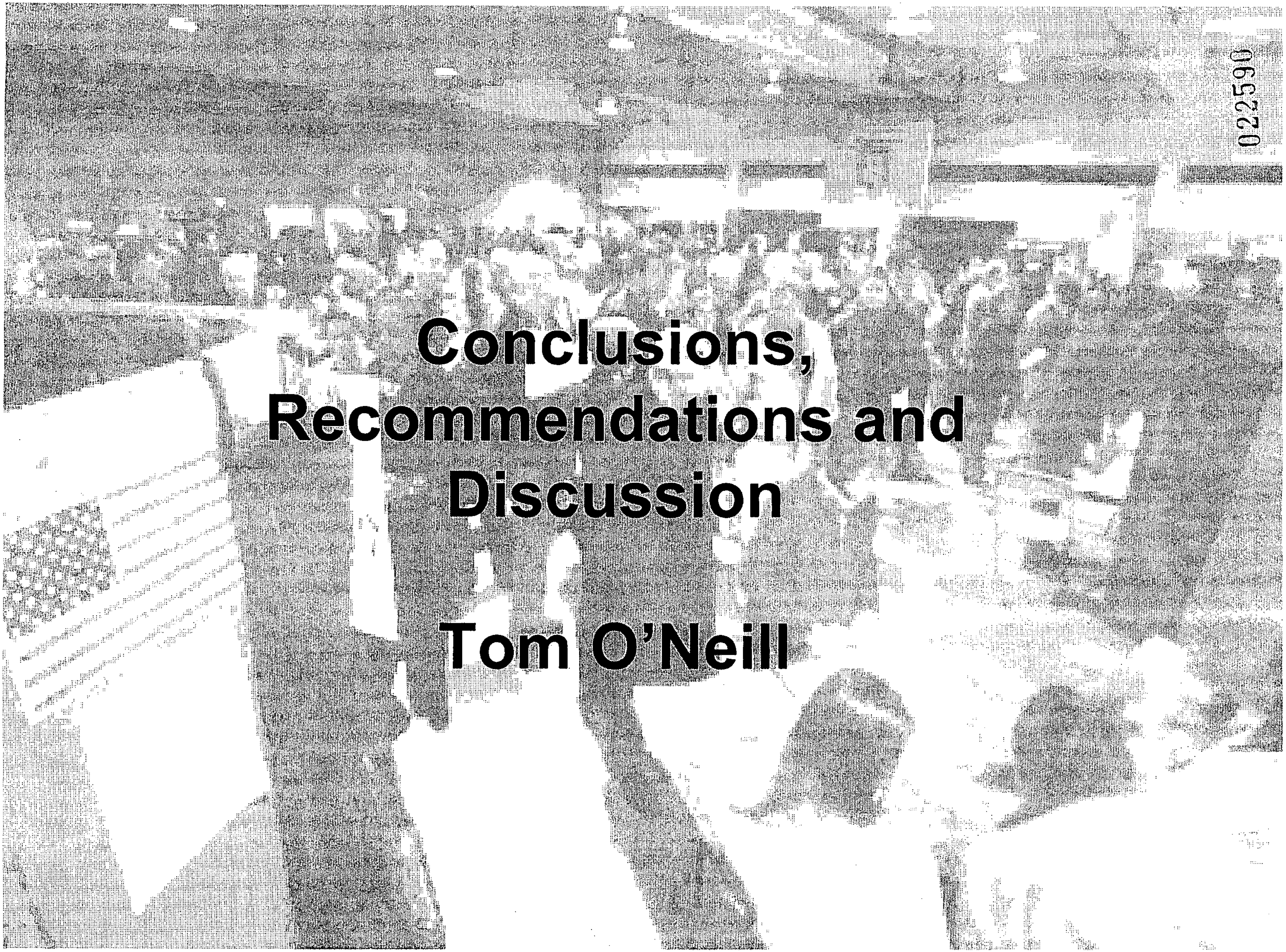


Conclusions

- Courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot.

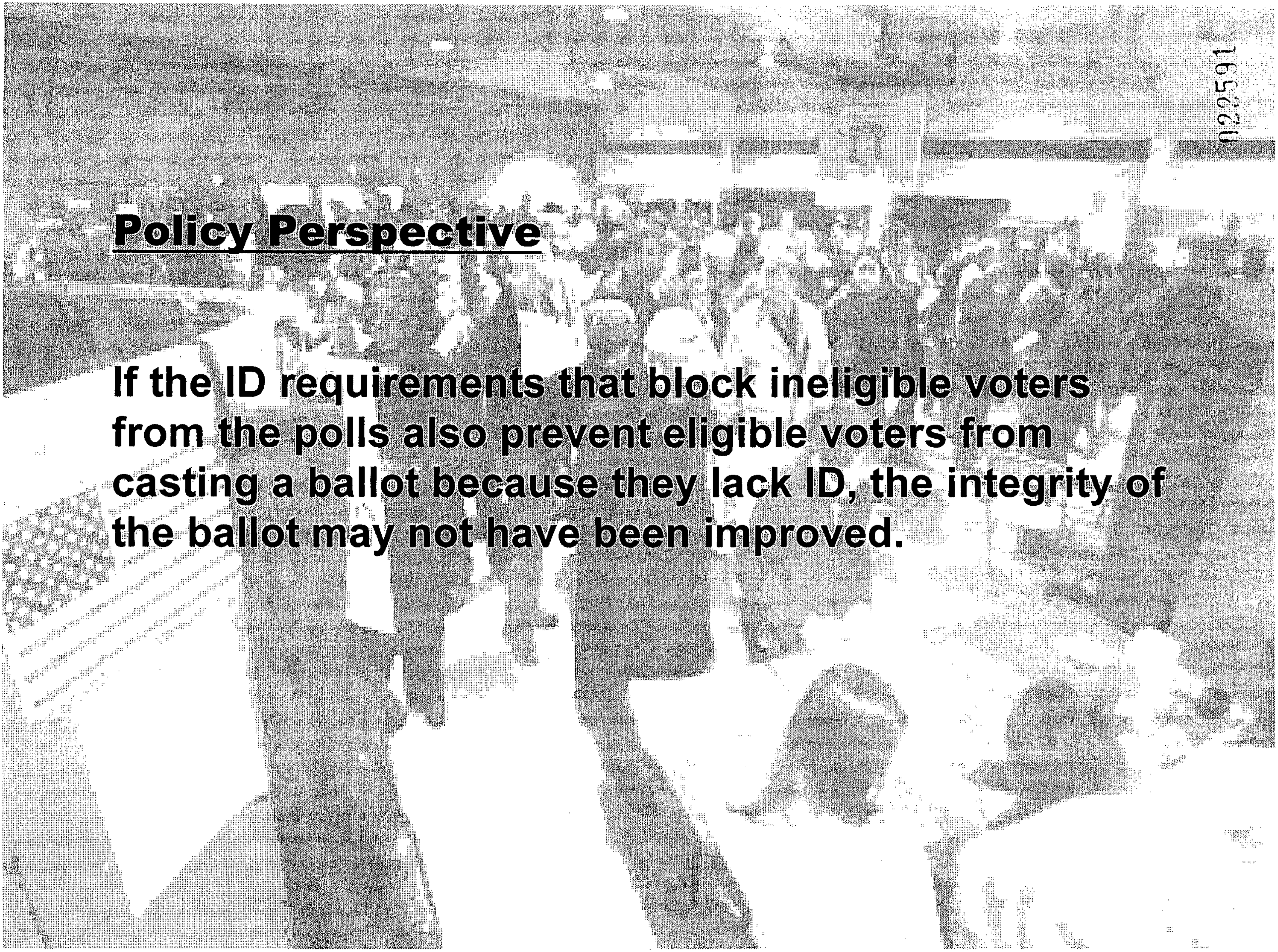
- Courts will balance the legitimate interest in preventing election fraud against:
  - Citizen's right to privacy
  - Reasonableness of requirements for identity documents.

- To forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.



Conclusions, Recommendations and Discussion

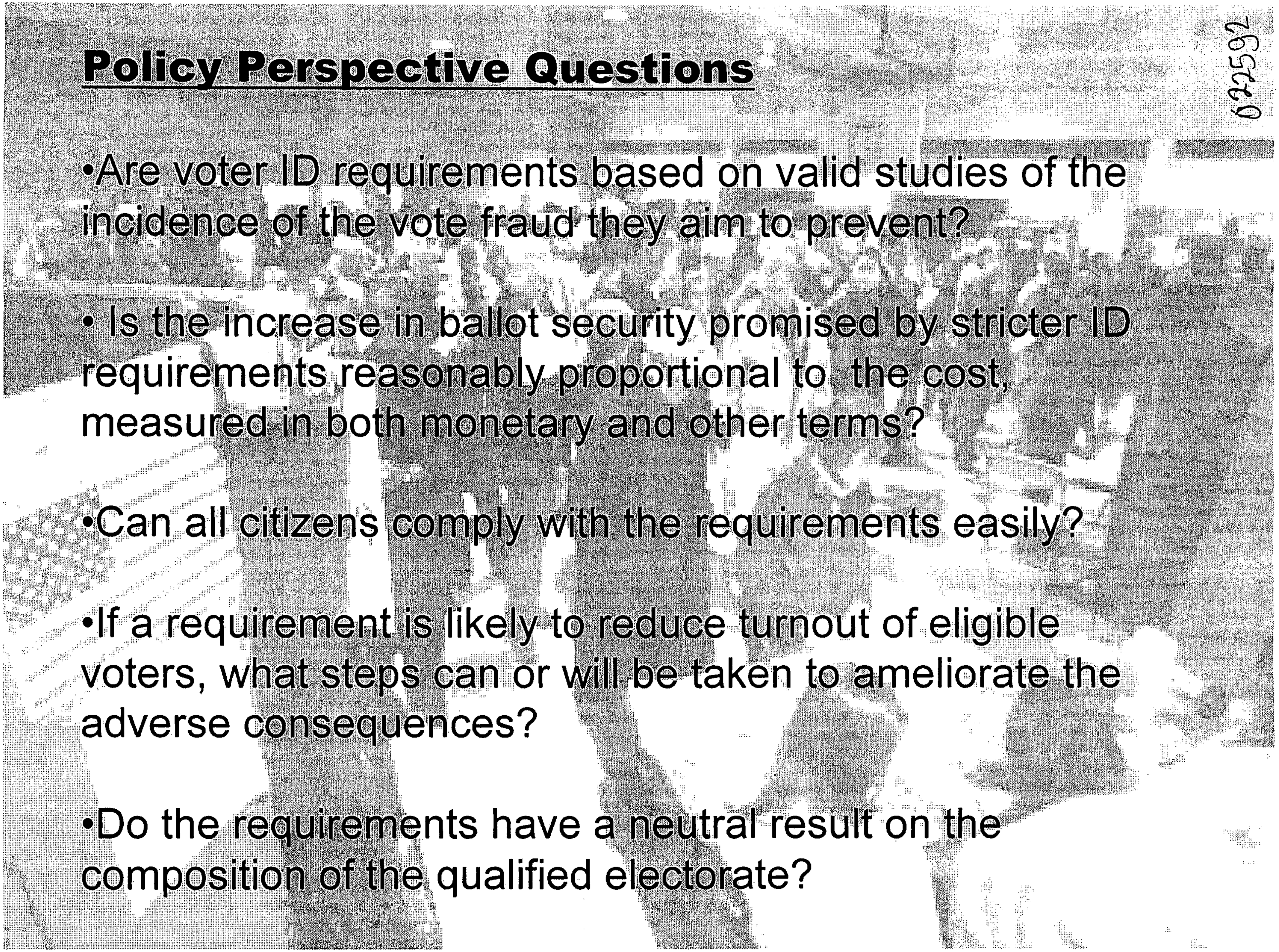
Tom O'Neill



Policy Perspective

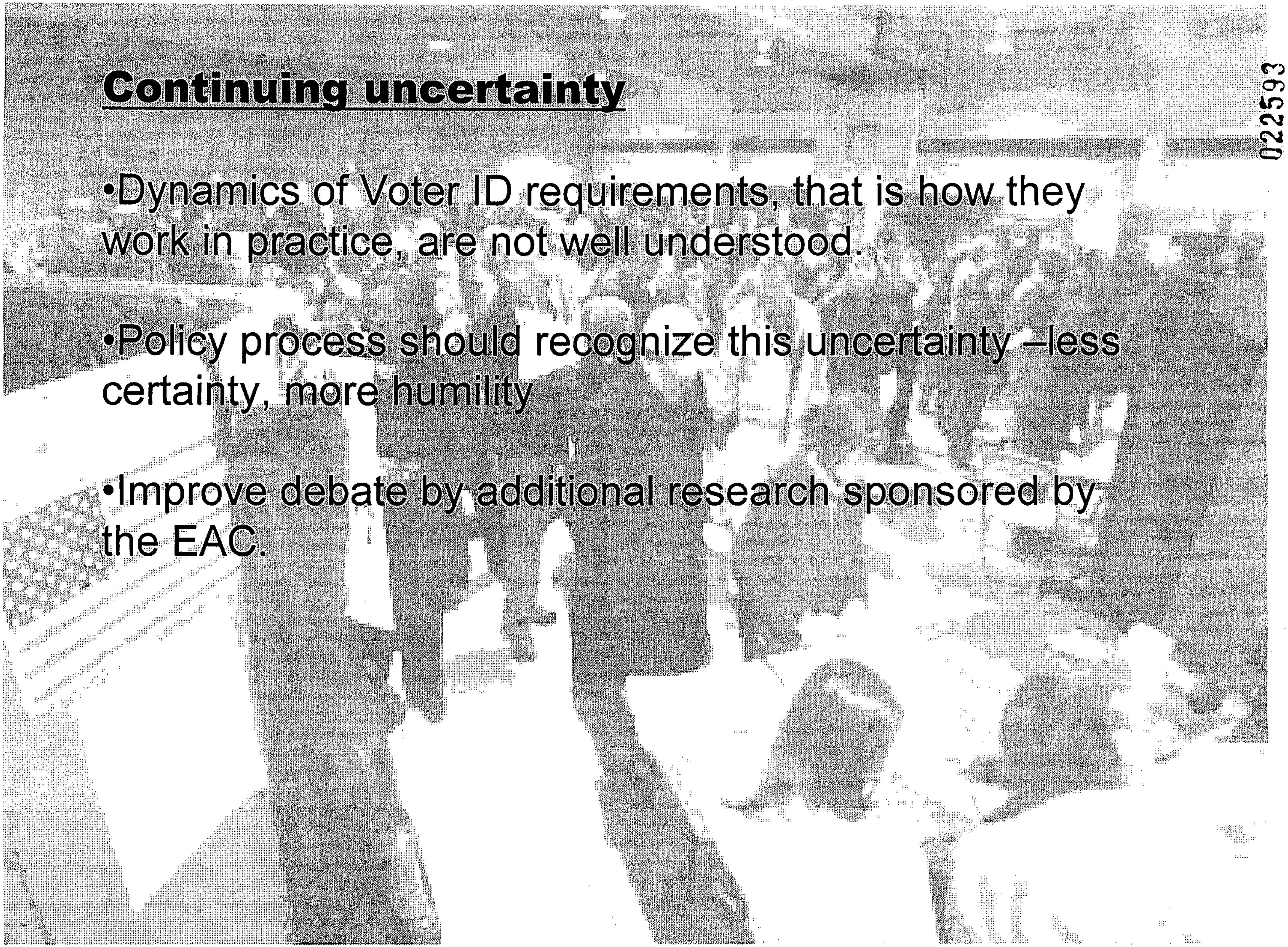
If the ID requirements that block ineligible voters from the polls also prevent eligible voters from casting a ballot because they lack ID, the integrity of the ballot may not have been improved.

Policy Perspective Questions

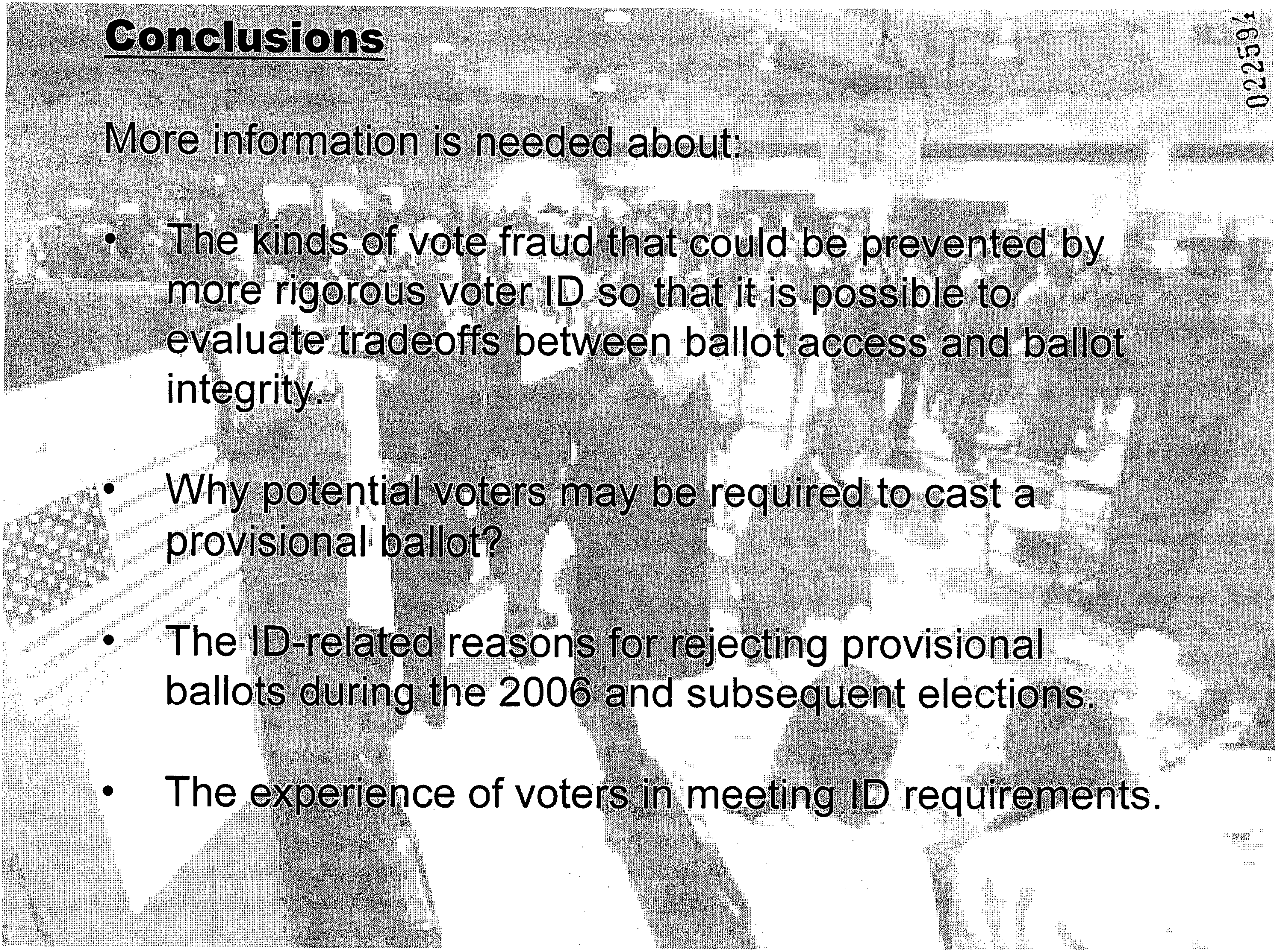


- Are voter ID requirements based on valid studies of the incidence of the vote fraud they aim to prevent?
- Is the increase in ballot security promised by stricter ID requirements reasonably proportional to the cost, measured in both monetary and other terms?
- Can all citizens comply with the requirements easily?
- If a requirement is likely to reduce turnout of eligible voters, what steps can or will be taken to ameliorate the adverse consequences?
- Do the requirements have a neutral result on the composition of the qualified electorate?

Continuing uncertainty



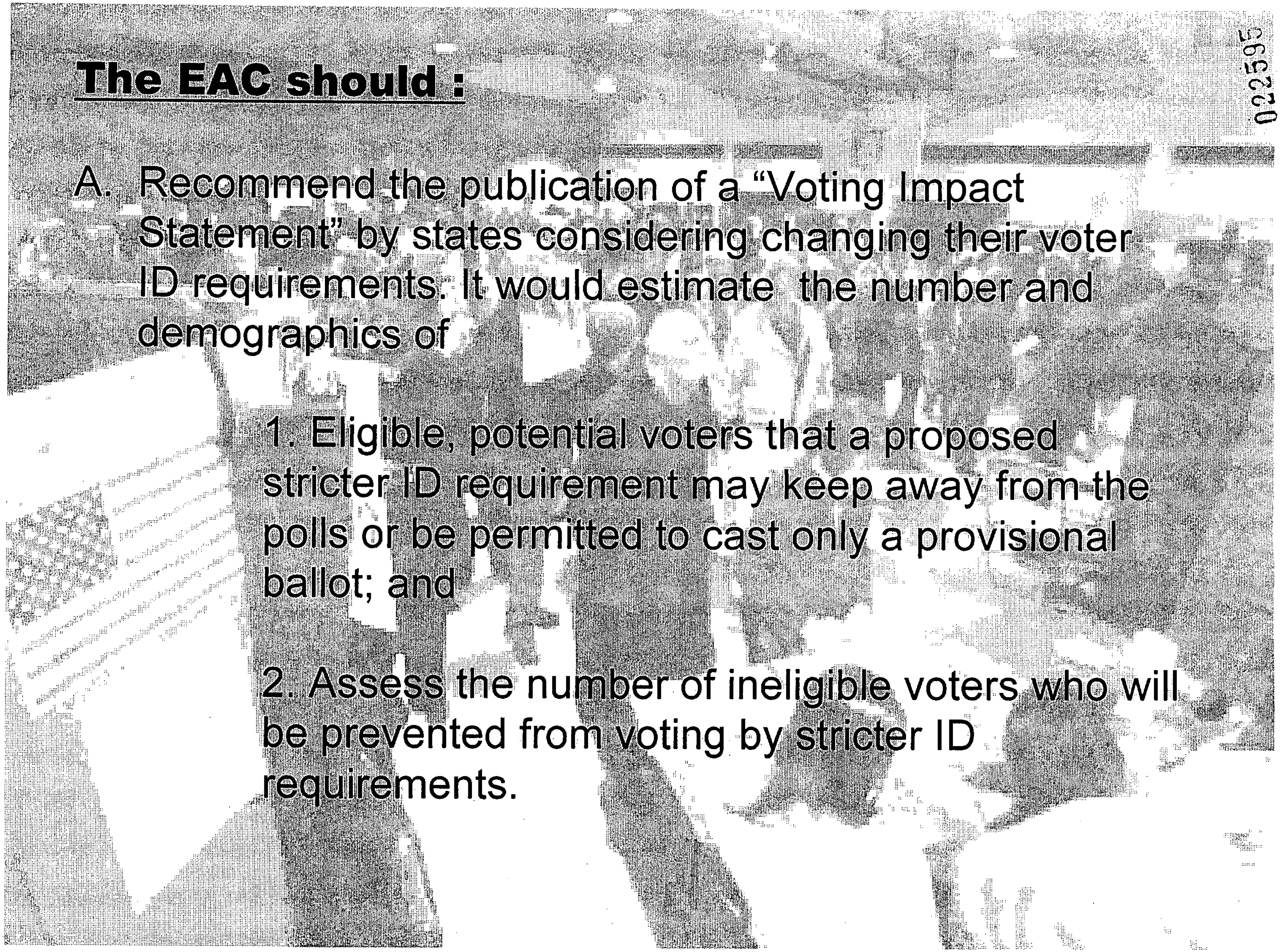
- Dynamics of Voter ID requirements, that is how they work in practice, are not well understood.
- Policy process should recognize this uncertainty –less certainty, more humility
- Improve debate by additional research sponsored by the EAC.



Conclusions

More information is needed about:

- The kinds of vote fraud that could be prevented by more rigorous voter ID so that it is possible to evaluate tradeoffs between ballot access and ballot integrity.
- Why potential voters may be required to cast a provisional ballot?
- The ID-related reasons for rejecting provisional ballots during the 2006 and subsequent elections.
- The experience of voters in meeting ID requirements.

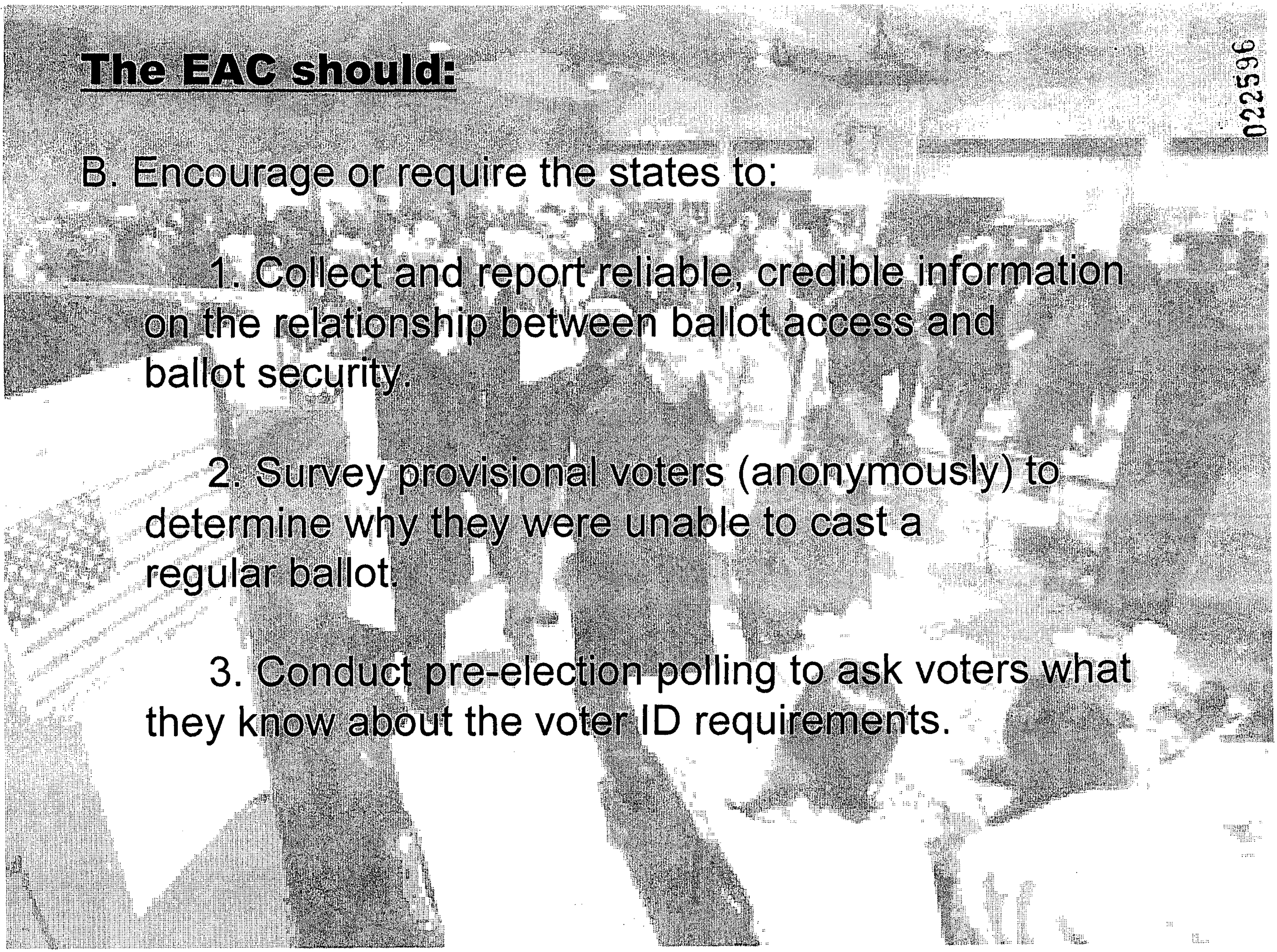


The EAC should :

A. Recommend the publication of a "Voting Impact Statement" by states considering changing their voter ID requirements. It would estimate the number and demographics of

1. Eligible, potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and

2. Assess the number of ineligible voters who will be prevented from voting by stricter ID requirements.



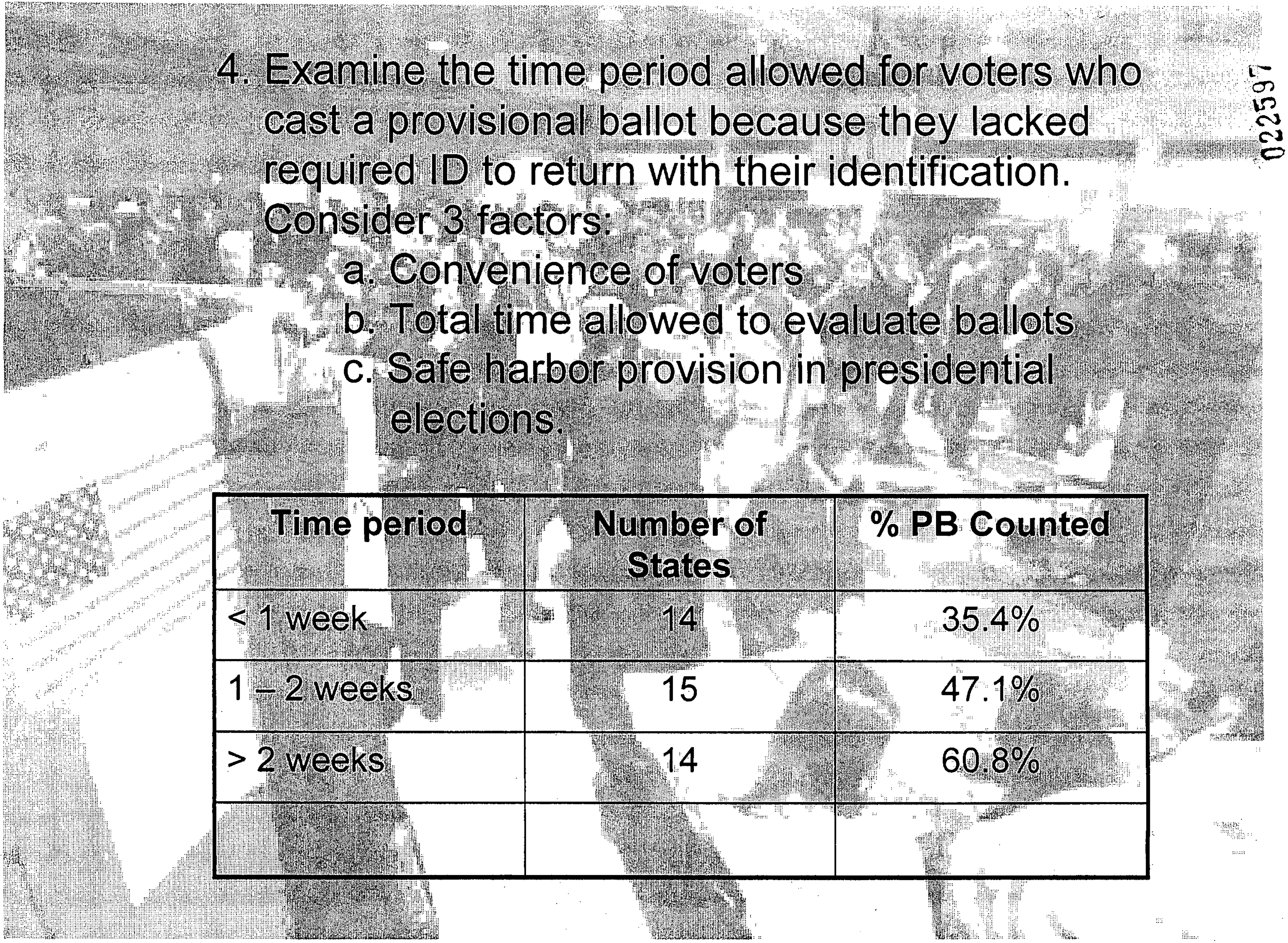
The EAC should:

B. Encourage or require the states to:

1. Collect and report reliable, credible information on the relationship between ballot access and ballot security.

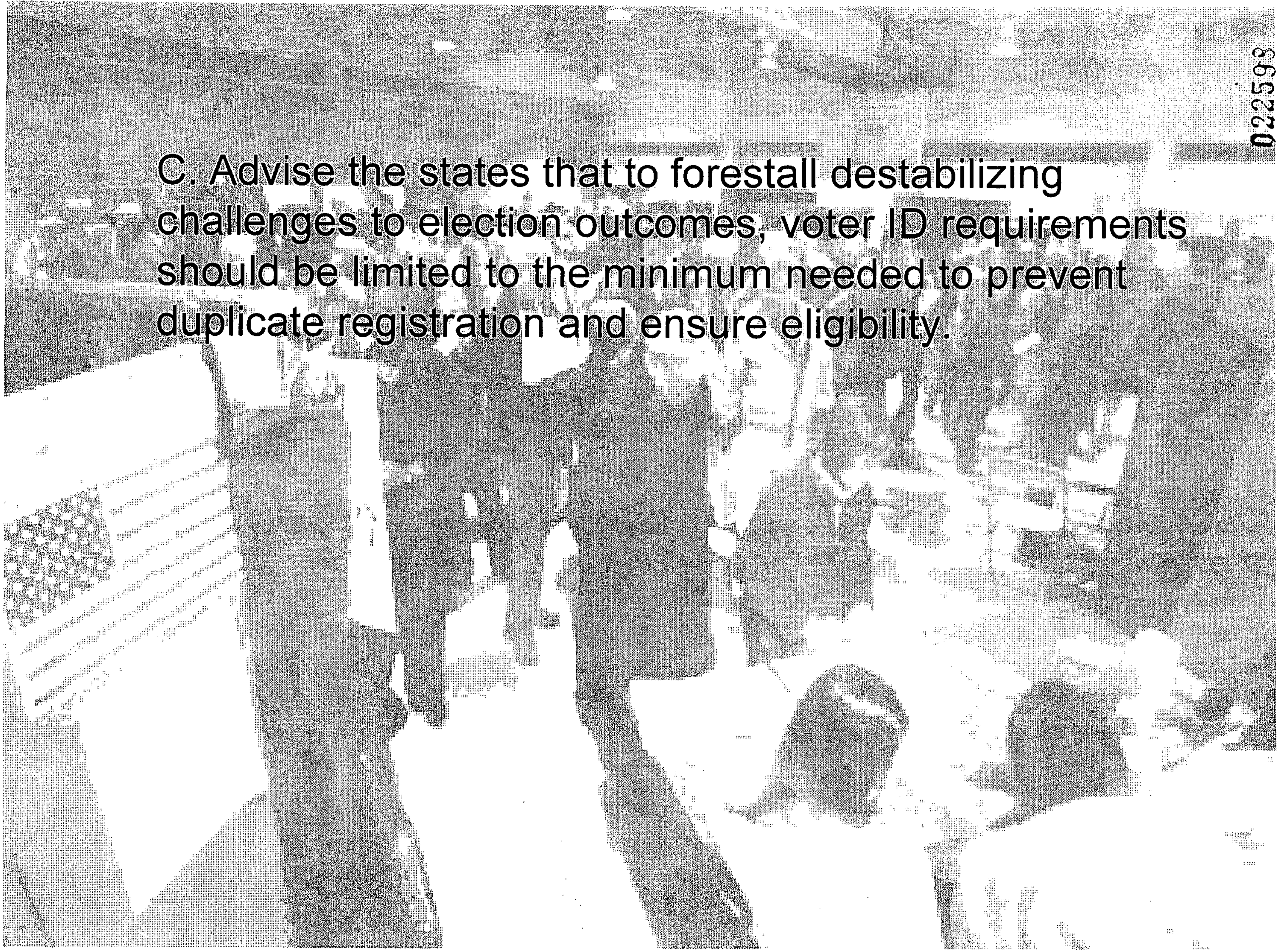
2. Survey provisional voters (anonymously) to determine why they were unable to cast a regular ballot.

3. Conduct pre-election polling to ask voters what they know about the voter ID requirements.



4. Examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. Consider 3 factors:
    a. Convenience of voters
    b. Total time allowed to evaluate ballots
    c. Safe harbor provision in presidential elections.

Time period	Number of States	% PB Counted
< 1 week	14	35.4%
1 – 2 weeks	15	47.1%
> 2 weeks	14	60.8%



C. Advise the states that to forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.

Briefing for

U. S. Election Assistance Commission

April 3, 2006

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:42 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Survey report

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:41 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
09/30/2005 03:02 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc
Subject Survey report

Provisional Voting Survey Report.doc Karen - Thanks for the very helpful phone call. Attached is the Survey Report. Let me know if you have trouble opening it or need any clarification or further information. Thanks and have a good weekend.

John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

NATIONAL SURVEY
OF
LOCAL ELECTION OFFICIALS' EXPERIENCES WITH PROVISIONAL VOTING

Conducted by:
Eagleton Institute of Politics

Conducted by:
THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Eagleton Institute of Politics
Center for Public Interest Polling

Data Collection:
July-August 2005

NATIONAL SURVEY
OF
LOCAL ELECTIONS OFFICIALS' EXPERIENCES WITH PROVISIONAL VOTING

TABLE OF CONTENTS

EXECUTIVE SUMMARY: NATIONAL SURVEY OF LOCAL ELECTION OFFICIALS' EXPERIENCES WITH PROVISIONAL VOTING

To assess and improve the experiences of local elections officials with provisional voting, the Eagleton Center for Public Interest Polling (ECPIP) at the Eagleton Institute of Politics, Rutgers University conducted a national survey of local elections officials. Telephone interviews were conducted between July 21 and August 4, 2005 with a random sample of 400 local election officials. The sample of local election officials were drawn from counties, or equivalent election jurisdictions such as boroughs, municipalities, parishes, towns or cities. The sample of local election officials was then stratified according to when the state had enacted provisional voting systems -- before or after the passage of the Help America Vote Act of 2002 (HAVA) -- as well as the population size of the voting jurisdiction. Those states that offered voters lost in the system the opportunity to cast a ballot pre-HAVA (2002) were considered "old provisional voting states"; and the states where voters not found on the registration list were not offered any recourse and thus, were not permitted to vote in the 2000 Election were labeled "new provisional voting states."

Further adjustments were made to take into consideration the population size of the voting jurisdiction. The "Old" and "New" states were separated into three categories – small, medium, and large – based on the population size of the voting jurisdiction. A voting jurisdiction with a population of 49,999 or less was considered small, 50,000 to 199,999 regarded as medium, and large consisted of 200,000 or more. This sampling frame yielded 400 cases (196 Old; 204 New)[1] consisting of six sample types: New Small (n=83), Old Small (n=71), New Medium (n=83), Old Medium (n=75), New Large (n=38), and Old Large (n=50).

The survey addressed the following topics: experience with the administration of provisional voting system, state guidance for implementing provisional voting, implementing provisional voting, general perceptions, and recommendations for the future. This Executive Summary provides an overview of key findings from the study.

Experiences with Provisional Voting System in Jurisdiction

Survey participants were asked a number of questions regarding their general experience with provisional voting.

- A majority of the "New" states' election officials (62%), and nearly twice as many as the "Old" (33%), indicated that "100 or less ballots" were cast in the election jurisdiction. A significantly larger percentage (14%) of the "Old" (28%) estimated that "between 100 to just under 500" provisional ballots were cast.
- Most (61%) of the "Old" states reported that "A lot" of these provisional ballots were counted compared to only 19 percent for the "New" states. A

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[1] At the studies conclusion it was determined that Rhode Island's affidavit voting system did not meet the criteria for placement in the Old State status and thus, the state was reassigned as "New." The reassignment of local election respondents representing Rhode Island resulted in a 49 (Old)/51 (New) split, rather than half of the sample being drawn from "Old" and half from "New." Unlike the other states (AL, KY, MI, MS, TX) with affidavit voting systems in place pre-HAVA, Rhode Island did not offer voters any real recourse to cast a ballot if the individual's name was not listed on the registration rolls. Instead, the state allowed voter's claiming eligibility, but not found on the registration rolls, to sign an affidavit enabling the election official to call the central registrar to verify the voter's eligibility. Only if the voter's name was found on the list was he or she permitted to cast a ballot.

much larger percentage of the "New" subgroup felt that only "Some" (32%) or "Very Few" (32%) provisional ballots were actually counted.

- A sizeable majority of both subgroups (Old=64%, New=77%) attributed the most need for the use of provisional ballots in their jurisdiction to "individual's name not listed on the voter registration rolls."
- More than 7-in-10 in both subgroups agreed that "individuals who were not registered at the time of casting their provisional ballots" constituted the most important reason that these ballots were not validated and counted in their jurisdiction.

State Guidance for Implementing Provisional Voting

- A sizeable majority of both subgroups (Old=85%, New=83%) received provisional voting instruction from their state governments.
- Appreciable differences in the type of instruction received involved "whether the provisional ballot could be used as an application to update the voter's registration" (Old=74%; New 59%); "guidelines for determining which provisional ballots were to be counted" (Old=87%; New=94%); and "how to design the structure of the provisional ballot (Old=71%; New 57%)."
- Overall, 98 percent of both subgroups found the voting instructions they received from the state government useful.

Implementing Provisional Voting in Jurisdiction

- When asked to describe the instructions or information provided to poll workers to help determine voters correct precinct or polling place, both subgroups employed various strategies including access to a list of eligible voters (Old=81%; New 80%), dedicated telephone line for poll workers (Old=93%; New=91%), and additional staff such as "greeters" (Old=46%; New=42%). Very few election officials in both (Old=11%, New=12%) reported the existence of a statewide voter registration database.

- A much larger percentage (70%) of "Old" states' election officials compared with 50 percent of the "New" used maps to help identify correct polling locations.
- 14 percent of all the election officials said that they did not provide written procedures or training to poll workers for the counting of provisional ballots. However, overall both subgroups felt that the administration of provisional voting in their jurisdiction was a success on all accounts.
- A variety of measures were employed to enable voters to determine if their provisional ballots were counted. In both subgroups the most widely used method was "the main telephone for the local or county election office" with 66 percent of the New compared to 75% of the Old indicating this method was provided.
- The measure least cited for voters to determine if their provisional ballots were counted was "email notification." Only 10% reported that the election jurisdiction offered voters this opportunity.

General Perceptions

- Close to half (40%) of the election officials felt more training for poll workers was needed.

- 39 percent of the "New" states' election officials agreed that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted compared to 28% of the "Old".
- 13 percent more of the election officials from "New" states (39%) reported that more time was needed to implement provisional voting procedures.
- Only about half (56%) of the "New" states' election officials reported the provisional voting system was easy to implement while 73 percent from the "Old" found this to be the case.
- Seventeen percent more of the "Old" states' election officials (75%) agreed that the provisional voting system in their polling jurisdiction enabled more people to vote.

Recommendations for the Future

Survey participants were asked a number of questions regarding their general level of agreement with several statements regarding provisional voting.

- More election officials from "Old" states agreed that provisional voting sped up and improved polling place operations on Election Day (Old=53%; New=41%); and that the process helped election officials maintain more accurate registration databases (Old=63%; New=38%).
- 60 percent of the "New" states' election officials agreed that provisional voting created unnecessary problems for election officials and poll workers, compared with only 42% of the "Old."

- A majority of both subgroups agreed that "there is a need to offer voters the opportunity to cast provisional ballots." However, a 19 percent differential exists between the two subgroups (Old=81%; New=62%).
- A slightly larger percentage (9%) of the "Old" states' election officials (93%) felt that the provisional voting system in their polling jurisdiction was a success.
- Forty percent of the local election officials felt that the most effective way to increase the number of provisional ballots validated and counted in an election would be to administer provisional voting in a central location rather than at individual polling places.
- When asked what would be most effective in reducing the number of provisional ballots cast in an election, most (28%) of the local election officials chose providing a state sponsored website for individuals to check registration status online before going to the polling place. A slightly smaller number (26%) favored having a statewide voter registration database available at polling places.

CHAPTER 1

INTRODUCTION

A. Project Background and Objectives

To assess and improve the experiences of local election officials with provisional voting, the Eagleton Center for Public Interest Polling (ECPIP) at the Eagleton Institute of Politics, Rutgers University conducted a national survey of local elections officials.

The study was designed to examine the experiences, attitudes, and general impressions of local election officials with implementing provisional voting. Specifically, the study sought to ascertain the type of information, guidance, and training local election officials received from the State government in administering provisional voting, and how the information, guidance, and training was then distributed to poll workers and voters.

B. Summary of the Research Methodology

The survey involved telephone interviews conducted between July 21 and August 4, 2005 with a random sample of 400 local election officials. The sampling error for this total sample of 400 is ±4.9 percent at a 95 percent confidence level. Of these local election officials, 196 were selected to represent "old provisional voting states" and 204 for "new provisional voting states."[2] These subgroups have a sampling error of ±6.9 percent for the "New" and ±7.0 for the "Old" at a 95 percent confidence level.

Sampling error is the probability difference in results between interviewing everyone in a population versus interviewing a scientific sample taken from that population. Sampling error does not take into account any other possible sources of error inherent in any study of

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[2] See footnote 1.

public opinion. A more comprehensive description of the research methodology is included in Appendix A.

C. Profile of Survey Participants

Table 1.1 provides a profile of survey participants by status including the entire sample of counties or equivalent and the subgroups within the "Old" or "New" status. The subgroup definitions of "Old" and "New" were provided by a report released by Election Line titled "The Provisional Voting Challenge" (December, 2001). The "New" states include: Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Missouri, Montana, Nevada, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, and Vermont; and the "Old" states include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Washington D.C., Florida, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, and West Virginia.

D. Organization of the Report

The next chapter of this report examines the substantive survey results illustrated by statistical tables. The exact question wording precedes the table summarizing the percentages of the actual responses provided by the local election officials. In most cases the percentages on the tables read from top to bottom with the total equal to a 100 percent. In instances where there is statistical rounding, the total may be more or less than 100 percent.

The tables will also report the sample size "(n)" for each group referenced in the table. The "(n)" is the actual number of people in the group upon which the percentages are based. Readers should be aware of the "(n)" when referencing the percentages on a table. Smaller subgroups will have a higher margin of sampling error. Therefore, in some cases what may appear to be a large difference between groups is a result of the larger sampling error and may not be statistically significant.

Following the statistical tables there are four appendices. Appendix A provides additional information about the survey methodology so that interested readers may have a better understanding of the process used to obtain the data. Appendix B consists of the pre-notification letter explaining the purpose of the study and inviting local election officials to participate in the study if called. The text of the questions asked in the survey and used in the analysis of the data is contained in Appendix C. The verbatim responses (as recorded by the interviewers) to open-end questions included in the survey are found in Appendix D.

TABLE 1.1
PROFILE OF SURVEY PARTICIPANTS BY STATUS

	TOTAL	OLD PV STATES	NEW PV STATES
Gender			
--Male	29%	30%	28%
--Female	71	71	72
Title			
Administrator of Elections	10	5	14
Chairman of Elections	3	5	1
Clerk of Court	2	1	4
Commissioner of Elections	7	15	--
County Clerk	17	16	18
Director of Elections	16	20	12
Registrar of Elections	8	8	8
Secretary of Elections	3	1	5
Supervisor of Elections	7	7	8
Town Clerk	4	2	6
Other	25	23	27
Position			
--Hired	14	16	12
--Appointed	42	41	44
--Promoted	2	1	3
--Elected	42	42	42
--Other	1	1	1
Years Worked			
--Less than one year	1	2	1
--1-10 years	49	49	50
--11-20 years	34	37	32
--21-30 years	12	11	14
--31-43 years	3	3	4
Region			
--West	17	14	20
--South	29	28	30
--Midwest	46	48	44
--Northeast	9	11	7
Statewide Registration			
--Yes	34	20	48
--No	66	81	52
Battleground State			
--Yes	17	19	14
--No	84	81	86

TABLE 2.1
EXPERIENCE WITH PROVISIONAL VOTING SYSTEM IN JURISDICTION [Q.3-6]

3. What is your best estimate of the total number of provisional ballots cast in the 2004 election in your jurisdiction, whether they were ultimately counted or not? Your best estimate is fine.

	Old versus New		(n)
	Old	New	
1 to less than 100	33%	62%	(191)
Between 100 to just under 500	28	14	(82)
Between 500 to just under 1000	12	5	(35)
1000 or more	19	9	(57)
(VOL) None/Zero	7	9	(31)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .000 level.**

4. In your opinion, how many of these provisional ballots were counted – a lot, some, very few, or none at all?

	Old versus New		(n)
	Old	New	
A lot	61%	19%	(146)
Some	17	32	(90)
Very few	18	32	(91)
None at all	4	17	(38)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	---
	101	101	(369)

*****statistically significant at the .000 level.**

5. In your opinion, which one of the following, if any, created the <u>most</u> need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

	Old versus New		(n)
	Old	New	
Individual's name not listed on the voter registration rolls	64%	77%	(260)
FIRST TIME voters couldn't provide the proper identification	5	7	(21)
Voter's eligibility challenged	12	5	(30)
Registered voters could not provide the proper identification	4	7	(19)
(VOL) Other (SPECIFY)	14	4	(32)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	1	---	(1)
	102	102	(369)

*****statistically significant at the .01 level.**

6. In your opinion, which one of the following, if any, was the most important reason that provisional ballots cast in your jurisdiction were not validated and ultimately not counted in the 2004 Election?

	Old versus New		(n)
	Old	New	
Individual failed to provide the identification required to validate the provisional ballot	2%	3%	(10)
Signature on the provisional ballot did not match the signature on the registration form	1	---	(1)
Provisional ballot cast in the incorrect voting precinct	16	10	(48)
Individual was not registered	75	76	(280)
(VOL) All provisional ballots were validated and counted in 2004 Election	2	4	(12)
(VOL) Other (SPECIFY)	3	4	(13)
(VOL) Don't Know	1	2	(5)
(VOL) Refused	---	---	(---)
	100	99	(369)

TABLE 2.2
PRE-ELECTION EXPERIENCE:
STATE INSTRUCTION AND INFORMATION [Q.7-13]

7. Were provisional voting instructions provided by the state government for the 2004 Election?

	Old versus New		(n)
	Old	New	
Yes	85%	83%	(335)
No	14	17	(63)
(VOL) Don't know	1	---	(2)
(VOL) Refused	---	---	(---)
	100	100	(400)

8. Which of the following provisional voting instructions, if any, did you receive from the state government?

	Old versus New		(n=335)
	Old	New	
How to administer the provisional voting system	90%	91%	(303)
Who is eligible to vote using a provisional ballot	93	92	(310)
How individuals vote using a provisional ballot	90	85	(292)
The jurisdiction where individuals can vote by provisional ballot	78	80	(265)
Whether the provisional ballot could be used as an application to update the voter's registration*** *****statistically significant at the .01 level.**	74	59	(222)
How to train poll workers to process provisional ballots	89	88	(295)
How to provide voters with the opportunity to verify if their provisional ballot was counted	92	90	(304)
Guidelines for determining which provisional ballots are to be counted*** *****statistically significant at the .05 level.**	87	94	(304)
Strategies to reduce the need for voters to use provisional ballots	54	54	(182)
How to design the structure of the provisional ballot*** *****statistically significant at the .05 level.**	71	57	(213)
Other (VOL)	---	---	(---)
All of the above (VOL)**	---	---	(22**)
None of the above (VOL)	---	---	(---)
Don't Know (VOL)	1	2	(5)
Refused (VOL)	---	---	(---)

**included in totals above.

9. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on the jurisdiction where individuals can vote by provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION ON THE JURISDICTION WHERE INDIVIDUALS CAN VOTE BY PROVISIONAL BALLOT IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	3%	(6)
Useful	96	95	(253)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	---	---	(---)
	100	100	265

10. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to provide voters with the opportunity to verify if their provisional ballot was counted -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION ON HOW TO PROVIDE VOTERS WITH THE OPPORTUNITY TO VERIFY IF THEIR PROVISIONAL BALLOT WAS COUNTED IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	1%	(4)
Useful	97	96	(293)
(VOL) Don't Know	1	3	(7)
(VOL) Refused	---	---	(---)
	100	100	(304)

11. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing guidelines for determining which provisional ballots are to be counted -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION FOR ESTABLISHING GUIDELINES FOR DETERMINING WHICH PROVISIONAL BALLOTS ARE TO BE COUNTED IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	3%	(8)
Useful	97	96	(293)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	---	---	(---)
	100	100	(304)

12. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing strategies to reduce the need for voters to use provisional ballots -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION FOR ESTABLISHING STRATEGIES TO REDUCE THE NEED FOR VOTERS TO USE PROVISIONAL BALLOTS IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	7%	8%	(13)
Useful	90	92	(166)
(VOL) Don't Know	3	---	(3)
(VOL) Refused	---	---	(---)
	100	100	(182)

13. Thinking generally, overall how useful were the provisional voting instructions you received from the state government -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	1%	1%	(4)
Useful	98	98	(324)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	100	100	(330)

TABLE 2.3
IMPLEMENTATION OF INSTRUCTIONS AND DISTRIBUTION OF INFORMATION TO ELECTION EMPLOYEES [Q.14-21]

14. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

	Old versus New		
	Old	New	(n=400)
Access to a list of eligible voters in the jurisdiction	81%	80%	(322)
Telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	90	93	(365)
Maps of adjacent precincts for poll workers to help voters locate their residence and corresponding polling place*** *****statistically significant at the .001 level.**	70	50	(239)
Additional staff such as "greeters" at polling places to direct voters to the correct polling location	46	42	(176)
Statewide voter registration database available at polling places	11	12	(46)
Other (VOL)	1	---	(1)
None of the above (VOL)	2	1	(6)
Don't Know (VOL)	---	1	(2)
Refused (VOL)	---	---	(---)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?]

(READ AND ROTATE Q.15 – Q.21)

15. Providing training to poll workers on how to administer provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	1%	2%	(5)
Successfully	96	95	(382)
(VOL) Didn't perform this activity	3	3	(11)
(VOL) Don't Know	---	1	(2)
(VOL) Refused	---	---	(---)
	100	101	(400)

16. Providing written procedures to poll workers on how to administer provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	2%	(7)
Successfully	93	94	(373)
(VOL) Didn't perform this activity	4	3	(14)
(VOL) Don't Know	2	1	(5)
(VOL) Refused	---	1	(1)
	101	101	(400)

17. Providing your local election officials with written procedures on the casting of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	1%	(4)
Successfully	95	94	(378)
(VOL) Didn't perform this activity	2	4	(13)
(VOL) Don't Know	2	1	(4)
(VOL) Refused	---	1	(1)
	101	101	(400)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?] (cont'd.)

18. Providing your local election officials with <u>written</u> procedures on the <u>counting</u> of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	1%	(5)
Successfully	81	85	(333)
(VOL) Didn't perform this activity	16	12	(56)
(VOL) Don't Know	2	1	(4)
(VOL) Refused	---	1	(2)
	101	100	(400)

19. Providing your local election officials <u>training</u> for the <u>counting</u> of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	1%	3%	(7)
Successfully	80	87	(334)
(VOL) Didn't perform this activity	18	10	(56)
(VOL) Don't Know	1	---	(2)
(VOL) Refused	---	1	(1)
	100	101	(400)

20. Making <u>information</u> available to help poll workers determine voters' assigned precinct or polling place.

	Old versus New		(n)
	Old	New	
Not successfully	2%	3%	(11)
Successfully	92	91	(367)
(VOL) Didn't perform this activity	5	5	(20)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	100	100	(400)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?] (cont'd.)

21. Providing <u>training</u> to help poll workers determine voters' assigned precinct or polling place.

	Old versus New		(n)
	Old	New	
Not successfully	2%	2%	(7)
Successfully	92	88	(360)
(VOL) Didn't perform this activity	6	8	(27)
(VOL) Don't Know	1	2	(6)
(VOL) Refused	---	---	(---)
	101	100	(400)

TABLE 2.4
POST-ELECTION EXPERIENCE:
COUNTING BALLOTS [Q.22-25]

22. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

(ACCEPT MULTIPLE RESPONSES; READ AND ROTATE LIST)

	Old versus New		(n=400)
	Old	New	
Notification by mail	50%	45%	(188)
Dedicated Toll-Free Telephone Hotline	42	36	(156)
Email notification	13	9	(43)
Website confirmation	21	24	(90)
Main telephone number for the local or county election office	75	66	(281)
All of the above (VOL)	**	**	**
None of the above (VOL)	3	6	(17)
Other (VOL)	1	1	(2)
Don't Know (VOL)	1	1	(3)
Refused (VOL)	---	---	(---)

**included in the totals above.

23. How confident are you that poll workers properly distributed provisional ballots to voters?

[Q23-25 - ASKED ONLY AMONG THOSE WHO GAVE BEST ESTIMATE OF TOTAL NUMBER OF PROVISIONAL BALLOTS CAST IN THE 2004 ELECTION (Q3=1-4)]

	Old versus New		(n)
	Old	New	
Not confident	4%	6%	(18)
Confident	93	93	(344)
(VOL) Don't Know	3	1	(7)
(VOL) Refused	---	---	(---)
	100	100	(369)

24. How confident are you that election officials accurately assessed and validated provisional ballots?

	Old versus New		(n)
	Old	New	
Not confident	2%	2%	(7)
Confident	95	95	(350)
(VOL) Don't Know	3	3	(10)
(VOL) Refused	1	1	(2)
	101	101	(369)

25. How confident are you that the validated provisional ballots were accurately included in the final vote count?

	Old versus New		(n)
	Old	New	
Not confident	1%	---	(1)
Confident	99	98	(363)
(VOL) Don't Know	1	2	(5)
(VOL) Refused	---	---	(---)
	101	100	(369)

TABLE 2.5
GENERAL PERCEPTIONS [Q.26-35]

26. Now I am going to read you a list of items, please tell me which one you believe presented the <u>biggest</u> challenge in implementing provisional voting in your jurisdiction for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

(READ AND ROTATE 1-4)

	Old versus New		(n)
	Old	New	
Training of poll workers	38%	42%	(160)
Length of time provided before the election to implement the provisional voting process	13	14	(53)
Clarity of instruction received from your State Government	5	8	(27)
Having enough staff at the polling place	9	14	(46)
(VOL) Other (SPECIFY)	5	3	(15)
(VOL) All of the above	2	3	(9)
(VOL) None of the above	26	16	(83)
(VOL) Don't Know	3	1	(7)
(VOL) Refused	---	---	(---)
	101	101	(400)

Please tell me how much you agree or disagree with the following statements about Provisional voting in your jurisdiction for the 2004 Election. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

(READ AND ROTATE Q.27 –Q.35)

27. More <u>training</u> was needed on how to <u>administer</u> the provisional voting process.

	Old versus New		(n)
	Old	New	
Disagree	54%	46%	(200)
Neither Agree nor Disagree	6	5	(22)
Agree	38	49	(174)
(VOL) Don't Know	2	---	(4)
(VOL) Refused	---	---	(---)
	100	100	(400)

28. More <u>funding</u> was needed to <u>educate voters</u> about their rights to cast a provisional ballot.

	Old versus New		(n)
	Old	New	
Disagree	50%	43%	(185)
Neither Agree nor Disagree	11	12	(45)
Agree	39	45	(168)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	101	101	(400)

29. More <u>information</u> should have been provided to <u>voters</u> about the jurisdiction where provisional ballots must be cast in order to be counted.

	Old versus New		(n)
	Old	New	
Disagree	62%	50%	(222)
Neither Agree nor Disagree	8	8	(32)
Agree	28	39	(133)
(VOL) Don't Know	3	4	(13)
(VOL) Refused	---	---	(---)
	101	101	(400)

*****statistically significant at the .05 level.**

30. More <u>information</u> was needed for <u>poll workers</u> to determine the voter's assigned precinct and polling place.

	Old versus New		(n)
	Old	New	
Disagree	68%	63%	(261)
Neither Agree nor Disagree	7	5	(25)
Agree	23	29	(104)
(VOL) Don't Know	2	3	(10)
(VOL) Refused	---	---	(---)
	100	100	(400)

31. More <u>time</u> was needed to <u>implement</u> provisional voting procedures.

	Old versus New		(n)
	Old	New	
Disagree	66	55	(242)
Neither Agree nor Disagree	7	5	(24)
Agree	26	39	(130)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .05 level.**

32. The provisional voting system was <u>easy</u> to implement.

	Old versus New		(n)
	Old	New	
Disagree	24%	35%	(117)
Neither Agree nor Disagree	3	9	(25)
Agree	74	56	(258)
(VOL) Don't Know	---	---	(---)
(VOL) Refused	---	---	(---)
	101	100	(400)

*****statistically significant at the .01 level.**

33. The provisional voting system in my polling jurisdiction <u>enabled more people to vote</u>.

	Old versus New		(n)
	Old	New	
Disagree	19%	29%	(97)
Neither Agree nor Disagree	4	12	(32)
Agree	75	58	(266)
(VOL) Don't Know	2	1	(5)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .01 level.**

34. I feel that <u>voters</u> in my jurisdiction were provided adequate <u>information</u> to successfully <u>cast</u> a provisional ballot.

	Old versus New		(n)
	Old	New	
Disagree	3%	5%	(17)
Neither Agree nor Disagree	2	4	(12)
Agree	93	91	(368)
(VOL) Don't Know	2	---	(3)
(VOL) Refused	---	---	(---)
	100	100	(400)

35. Adequate <u>support</u> was provided to me to assist in the <u>implementation</u> of provisional voting.

	Old versus New		(n)
	Old	New	
Disagree	7%	11%	(37)
Neither Agree nor Disagree	2	8	(20)
Agree	91	81	(343)
(VOL) Don't Know	---	---	(---)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .01 level.**

TABLE 2.6

RECOMMENDATIONS FOR THE FUTURE [Q.36-46]

36. Now I am going to read you a list of items. Please tell me which one you believe is the <u>most</u> important change needed in the implementation of provisional voting.

(RANDOMLY ROTATE 1-4)

	Old versus New		(n)
	Old	New	
More funding for poll worker training	24%	34%	(116)
More time for poll worker training	18	18	(72)
Clearer instruction from the Federal Government	19	18	(75)
Clearer instruction from the State Government	14	9	(47)
(VOL) Other (SPECIFY)	6	3	(19)
(VOL) All of the above	1	3	(7)
(VOL) None of the above	15	12	(55)
(VOL) No changes needed	2	1	(6)
(VOL) Don't Know	---	2	(3)
(VOL) Refused	---	---	(---)
	99	100	(400)

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

(READ AND ROTATE Q.37–Q.44)

37. A statewide voter registration database, accessible to poll workers on Election Day, would decrease the need for voters to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	43%	35%	(155)
Neither Agree nor Disagree	7	6	(26)
Agree	49	56	(210)
(VOL) Don't Know	2	3	(9)
(VOL) Refused	---	---	(---)
	101	100	(400)

38. A state-sponsored website designed for individuals to check registration status online, before going to the polling place on Election Day, would decrease the need for voters to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	24%	23%	(93)
Neither Agree nor Disagree	6	5	(22)
Agree	68	70	(277)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	1	---	(1)
	101	100	(400)

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat? (cont'd.)

39. Provisional voting speeds up and improves polling place operation on Election Day by resolving disputes between voters and poll workers.

	Old versus New		(n)
	Old	New	
Disagree	40%	55%	(190)
Neither Agree nor Disagree	6	3	(18)
Agree	53	41	(188)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	1	---	(1)
	101	100	(400)

40. Provisional voting helps election officials maintain more accurate registration databases.

	Old versus New		(n)
	Old	New	
Disagree	31%	49%	(161)
Neither Agree nor Disagree	4	11	(31)
Agree	63	38	(201)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .000 level.**

41. Provisional voting creates unnecessary problems for election officials and poll workers.

	Old versus New		(n)
	Old	New	
Disagree	52%	34%	(171)
Neither Agree nor Disagree	5	5	(20)
Agree	42	60	(206)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .01 level.**

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat? (cont'd.)

42. Provisional voting can be avoided by simplifying registration procedures.

	Old versus New		(n)
	Old	New	
Disagree	55%	43%	(195)
Neither Agree nor Disagree	6	5	(23)
Agree	38	50	(176)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	---	---	(---)
	101	100	(400)

43. There is a need to offer voters the opportunity to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	17%	31%	(98)
Neither Agree nor Disagree	2	6	(15)
Agree	81	62	(285)
(VOL) Don't Know	---	1	(2)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .001 level.**

44. The provisional voting system in my polling jurisdiction was a <u>success</u>.

	Old versus New		(n)
	Old	New	
Disagree	5%	8%	(27)
Neither Agree nor Disagree	2	7	(18)
Agree	93	84	(353)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	101	100	(400)

*****statistically significant at the .05 level.**

45. Which one of the following do you think would be the <u>most effective</u> in increasing the number of provisional ballots validated and ultimately <u>counted</u> in an election?

(RANDOMLY ROTATE 1-3)

	Old versus New		
	Old	New	(n)
In-precinct provisional voting only	21%	18%	(79)
Provisional voting from a central location rather than in individual polling places	37	44	(161)
In-jurisdiction provisional voting only	21	18	(77)
(VOL) Other (SPECIFY)	1	3	(7)
(VOL) All of the above	1	1	(2)
(VOL) None of the above	15	8	(47)
(VOL) Don't Know	4	9	(27)
(VOL) Refused	---	---	(---)
	100	101	(400)

46. Which one of the following do you think would be the most effective in reducing the number of provisional ballots cast in an election?

(RANDOMLY ROTATE 1-5)

	Old versus New Old	 New	(n)
Having a statewide voter registration database available at polling places	22%	30%	(105)
Providing additional staff such as "greeters" at polling places to direct voters to the correct polling location	6	6	(24)
Providing a state sponsored website to enable individuals to check registration status online before going to the polling place	30	27	(113)
Providing poll workers access to an updated printed list of eligible voters in the jurisdiction	5	5	(20)
Providing a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	14	18	(63)
(VOL) Other (SPECIFY)	---	1	(2)
(VOL) All of the above	4	3	(14)
(VOL) None of the above	16	9	(51)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	---	1	(1)
	99	102	(400)

APPENDIX A:

SURVEY METHODOLOGY

I. INTRODUCTION

This survey represents a joint venture of two programs – the Eagleton Institute of Politics, Rutgers University and the Eagleton Institute's Center for Public Interest Polling (ECPIP). This survey was designed to assess and improve the experiences of local elections officials with provisional voting.

II. QUESTIONNAIRE DEVELOPMENT

The questionnaire was developed for telephone administration by ECPIP researchers in consultation with Eagleton staff. The draft questionnaire was pretested with a random group of local election officials that yielded five completes. Only minor changes were made from that version and no further pretest was needed.

The questionnaire interview length averaged 18.4 minutes. An annotated version of the final survey instrument is included in this report (see Appendix C).

The questionnaire was programmed into a CATI (Computer Assisted Telephone Interviews) software system know as Quancept. The system facilitates the loops, rotations, randomization, and complex skip patterns found in this survey instrument. The programming was extensively checked and all logical errors were corrected.

III. SAMPLE DESIGN

A random national sample was compiled based on information acquired from the State Board of Elections in each of the 50 States and the District of Columbia. In all, 3,820 local election officials were eligible to participate in the study. To enhance compliance rates, pre-notification letters were sent to 2,471 of the local election officials. These letters explained the study's objectives and asked for the officials' participation in the study if contacted by an interviewer. Overall, 1,018 were contacted by telephone to participate in the study and among these, a total of 400 local election officials agreed to participate in the study.

The "Old" and "New" states were separated into three categories – small, medium, and large – based on the population size of the voting jurisdiction. A voting jurisdiction with a population of 49,999 or less was considered small, 50,000 to 199,999 regarded as medium, and large consisted of 200,000 or more. The sample was designed to make sure that each of the six sample types: New Small (n=83), Old Small (n=71), New Medium (n=83), Old Medium (n=75), New Large (n=38), and Old Large (n=50) were represented in the study. Overall, the survey yielded a response rate of 30 percent for the "Old" state sample and 53 percent for the "New" state sample.

APPENDIX B:

PRE-NOTIFICATION LETTER

DATE

NAME
TITLE
ADDRESS
CITY STATE ZIP

Dear NAME,

Rutgers, The State University of New Jersey, is conducting a national survey of elections officials' experiences with provisional voting in the 2004 national election. Through this survey we will learn the perspective of those who administer elections. It will improve our understanding of the process as we complete a broad research project on provisional voting in the context of effective election administration, voter access, and ballot security. The findings of the project will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006.

The EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan, federal agency that provides federal funds to states to upgrade voting systems and improve election administration. The EAC publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration. The EAC is funding the research project.

Participants in this study will be selected randomly and asked to share their experiences administering the provisional voting process in the 2004 election. The study will be conducted July 18th through August 5th. During that period a survey researcher <u>may</u> call you if you are, in fact, chosen at random from a national list of election officials. The researcher will ask you questions about your experience with provisional voting, your evaluation of the process, and your recommendations to improve it. The survey will take approximately 10-15 minutes. All of your answers will be completely confidential, and no statement or comment you make will be ascribed to you.

At the conclusion of the research project, we will present a report to the EAC including analysis of provisional voting procedures as well as recommendations for future practices and procedures. The guidance document based on our research will be published by the EAC in the Federal Register for public review and comment, and the EAC will hold a hearing on the guidance document this fall before adopting it.

Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We hope you will participate if called. Thank you for your consideration and interest.

Sincerely,

[scanned signature]

Ruth B. Mandel
Director
Board of Governors Professor of Politics

APPENDIX C:

ANNOTATED QUESTIONNAIRE

PROVISIONAL VOTING SURVEY

Sample: Local Elections Officials
National sample: 400 telephone interviews

Draft Version: July 19, 2005

Initial Screener

Hello, my name is _______________ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. May I please speak to [INSERT NAME FROM SAMPLE]?

[IF UNSURE WHO THIS INDIVIDUAL IS – ASK:]

May I please speak to the individual who was responsible for overseeing voting procedures for the 2004 election at the county, borough, municipality, or parish level such as the Registrar of Elections, County Clerk, Commissioner of Elections, Director of Elections, Administrator of Elections, or Clerk of Court?

[SKIP TO "CONSENT OF INDIVIDUAL DIFFERENT FROM SAMPLE CONTACT"]

Consent

Hello, my name is _______________ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. We recently sent you a letter requesting your participation in the confidential survey we are conducting with elections officials. Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We would very much like to include your opinions and would really appreciate it if you could assist us by providing as much information as you can to the best of your knowledge. You were randomly selected for the survey from a nationally representative list of election officials. We are not selling anything, and not asking for money.

The information you will be sharing today will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006. This information will be maintained at a secure site and your name will not be identified in the report. All your answers are completely confidential.

The survey should take no more than 10 or 15 minutes to complete.

Consent of Individual Different from Sample Contact

Hello, my name is ________________ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. We recently sent a letter to your office requesting participation in a confidential survey we are conducting with elections officials. Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We would very much like to include your opinions and would really appreciate it if you could assist us by providing as much information as you can to the best of your knowledge. You were randomly selected for the survey from a nationally representative list of election officials. We are not selling anything, and not asking for money.

The information you will be sharing today will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006. This information will be maintained at a secure site and your name will not be identified in the report. All your answers are completely confidential.

The survey should take no more than 10 or 15 minutes to complete.

IF NECESSARY: If you should have any questions about the study, you may contact the Research Project Coordinator, April Rapp, at the Eagleton Center for Public Interest Polling at 732-932-9384 ext. 261.

IF RESPONDENT DECLINES TO PARTICIPATE, ADDITIONAL PRODDING NEEDED:

--Your participation is very important because only 400 election officials have been randomly selected for this survey and your views will be used to provide provisional voting policy recommendations. We would be happy to fax you a letter outlining the study objectives. [If yes, can I please have your fax number?] (RECORD FAX NUMBER)

Screener

1. On Election Day, November 2nd, 2004 was it your responsibility to supervise the election at the county, borough, municipality, or parish level?

(n=400)

100%	YES	GO TO Q2
--	NO	GO TO Q1a
--	DON'T KNOW	TERMINATE
--	REFUSED	TERMINATE

1a. May I please have the name and phone number of the individual who was responsible for supervising the 2004 election at the county, borough, municipality, or parish level?

[RECORD NAME/PHONE NUMBER OF REFERRAL] (THANK AND TERMINATE)

Jurisdiction

2. What was your job title on Election Day, November 2nd, 2004?

(DO NOT READ – VOLUNTEER RESPONSE)

(n=400)

10%	Administrator of Elections
3	Chairman of Elections
2	Clerk of Court
7	Commissioner of Elections
17	County Clerk
16	Director of Elections
8	Registrar of Elections
3	Secretary of Elections
7	Supervisor of Elections
4	Town Clerk
25	Other (specify)
--	Don't Know
--	Refused

General: Provisional Voting

Now, I would like to ask you some questions about provisional voting in your jurisdiction.

3. What is your best estimate of the total number of provisional ballots cast in the 2004 election in your jurisdiction, whether they were ultimately counted or not? Your best estimate is fine.

(n=400)

48%	Less than 100	
21	Between 100 to just under 500	
9	Between 500 to just under 1000	
14	1000 or more	
8	None/Zero	**(GO TO Q7)**
1	Don't Know	
--	Refused	

(ASK ONLY IF Q3=1-4)

4. In your opinion, how many of these provisional ballots were counted – a lot, some, very few, or none at all?

(n=400)

40%	A lot
24	Some
25	Very few
10	None at all
1	Don't Know
--	Refused

5. In your opinion, which one of the following, if any, created the <u>most</u> need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

(READ AND ROTATE 1-4)

(n=369)

71%	Individual's name not listed on the voter registration rolls
6	<u>First time</u> voters couldn't provide the proper identification
8	Voter's eligibility challenged
5	Registered voters could not provide the proper identification
9	Other (specify)
2	Don't Know
--	Refused

6. In your opinion, which one of the following, if any, was the most important reason that provisional ballots cast in your jurisdiction were not validated and ultimately not counted in the 2004 Election?

(READ AND ROTATE 1-4)

(n=369)

3%	Individual failed to provide the identification required to validate the provisional ballot
--	Signature on the provisional ballot did not match the signature on the registration form
13	Provisional ballot cast in the incorrect voting precinct
76	Individual was not registered
3	All provisional ballots were validated and counted in 2004 election
4	Other (specify)
1	Don't Know
--	Refused

Pre-Election Experience: Instructions and Information Received (Content and Quality)

7. Were provisional voting instructions provided by the state government for the 2004 Election?

(n=400)

84%	Yes	**(GO TO Q8)**
16	No	**(GO TO Q14)**
1	Don't Know	**(GO TO Q14)**
--	Refused	

STATE GOVERNMENT INSTRUCTIONS AND INFORMATION

(ASK ONLY IF Q7=1)

8. Which of the following provisional voting instructions, if any, did you receive from the state government?

(ACCEPT MULTIPLE RESPONSES; ROTATE LIST)

(n=335)

	Yes	No
How to administer the provisional voting system	90%	10%
Who is eligible to vote using a provisional ballot	93	8
How individuals vote using a provisional ballot	87	13
The jurisdiction where individuals can vote by provisional ballot	79	21
Whether the provisional ballot could be used as an application to update the voter's registration	66	34
How to train poll workers to process provisional ballots	88	12
How to provide voters with the opportunity to verify if their provisional ballot was counted	91	9
Guidelines for determining which provisional ballots are to be counted	91	9
Strategies to reduce the need for voters to use provisional ballots	54	46
How to design the structure of the provisional ballot	64	37
Other (specify)	--	--
All of the above	7	93
None of the above	--	--
Don't know	2	99
Refused	--	--

(ASK ONLY IF Q8=4)

9. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on the jurisdiction where individuals can vote by provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

(n=265)

73%	Very useful
23	Somewhat useful
2	Not very useful
--	Not useful at all
2	Don't know
--	Refused

(ASK ONLY IF Q8=7)

10. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to provide voters with the opportunity to verify if their provisional ballot was counted -- very useful, somewhat useful, not very useful, or not useful at all?

(n=304)

77%	Very useful
20	Somewhat useful
1	Not very useful
--	Not useful at all
2	Don't know
--	Refused

(ASK ONLY IF Q8=8)

11. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing guidelines for determining which provisional ballots are to be counted -- very useful, somewhat useful, not very useful, or not useful at all?

(n=304)

80%	Very useful
16	Somewhat useful
2	Not very useful
1	Not useful at all
1	Don't know
--	Refused

(ASK ONLY IF Q8=9)

12. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing strategies to reduce the need for voters to use provisional ballots -- very useful, somewhat useful, not very useful, or not useful at all?

(n=182)

60%	Very useful
31	Somewhat useful
5	Not very useful
2	Not useful at all
2	Don't know
--	Refused

(ASK ONLY IF Q8=1-10)

13. Thinking generally, overall how useful were the provisional voting instructions you received from the state government -- very useful, somewhat useful, not very useful, or not useful at all?

(n=330)

76%	Very useful
22	Somewhat useful
1	Not very useful
--	Not useful at all
1	Don't know
--	Refused

Implementation of Instructions and Distribution of Information to Election Employees

Now I'm going to ask you some questions about poll worker training.

14. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

(ACCEPT MULTIPLE RESPONSES; READ EACH ITEM; AND ROTATE LIST)

(n=400)

	Yes	No
Access to a list of eligible voters in the jurisdiction	81%	20%
Telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	91	9
Maps of adjacent precincts for poll workers to help voters locate their resident and corresponding polling place	60	40
Additional staff such as "greeters" at polling places to direct voters to the correct polling location	44	56
Statewide voter registration database available at polling places	12	89
Other (specify)	--	--
None of the above	2	99
Don't know	--	--
Refused	--	--

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed:

(READ AND ROTATE Q15-Q21)

[PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?

15. Providing training to poll workers on how to administer provisional ballots.

(n=400)

69%	Very successfully
27	Somewhat successfully
1	Not very successfully
1	Not successfully at all
3	Didn't perform this activity
1	Don't Know
--	Refused

16. Providing written procedures to poll workers on how to administer provisional ballots.

(n=400)

71%	Very successfully
22	Somewhat successfully
1	Not very successfully
1	Not successfully at all
4	Didn't perform this activity
1	Don't Know
--	Refused

17. Providing your local election officials with written procedures on the casting of provisional ballots.

(n=400)

68%	Very successfully
27	Somewhat successfully
1	Not very successfully
--	Not successfully at all
3	Didn't perform this activity
1	Don't Know
--	Refused

18. Providing your local election officials with <u>written</u> procedures on the <u>counting</u> of provisional ballots.

(n=400)

65%	Very successfully
18	Somewhat successfully
1	Not very successfully
--	Not successfully at all
14	Didn't perform this activity
1	Don't Know
1	Refused

19. Providing your local election officials <u>training</u> for the <u>counting</u> of provisional ballots.

(n=400)

66%	Very successfully
17	Somewhat successfully
1	Not very successfully
1	Not successfully at all
14	Didn't perform this activity
1	Don't Know
--	Refused

20. Making <u>information</u> available to help poll workers determine voters' assigned precinct or polling place.

(n=400)

70%	Very successfully
22	Somewhat successfully
2	Not very successfully
1	Not successfully at all
5	Didn't perform this activity
1	Don't Know
--	Refused

21. Providing training to help poll workers determine voters' assigned precinct or polling place.

(n=400)

64%	Very successfully
26	Somewhat successfully
2	Not very successfully
--	Not successfully at all
7	Didn't perform this activity
2	Don't Know
--	Refused

Post-Election Experience: Counting Ballots

22. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

(ACCEPT MULTIPLE RESPONSES;READ AND ROTATE LIST)

(n=400)

	Yes	No
Notification by mail	47%	54%
Dedicated Toll-Free Telephone Hotline	39	62
Email notification	10	90
Website confirmation	22	78
Main telephone number for the local or county election office	70	30
All of the above	--	--
None of the above	4	96
Other (specify)	1	99
Don't Know	--	--
Refused	--	--

(ASK Q23-Q25 ONLY IF Q3=1-4)

23. How confident are you that poll workers properly distributed provisional ballots to voters?

(n=369)

63%	Very confident
30	Somewhat confident
4	Not very confident
1	Not at all confident
2	Don't Know
--	Refused

24. How confident are you that election officials accurately assessed and validated provisional ballots?

(n=369)

75%	Very confident
20	Somewhat confident
2	Not very confident
--	Not at all confident
3	Don't Know
1	Refused

25. How confident are you that the validated provisional ballots were accurately included in the final vote count?

(n=369)

95%	Very confident
3	Somewhat confident
--	Not very confident
--	Not at all confident
1	Don't Know
--	Refused

General Perceptions

26. Now I am going to read you a list of items, please tell me which one you believe presented the biggest challenge in implementing provisional voting in your jurisdiction for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

(READ AND ROTATE 1-4)

(n=400)

40%	Training of poll workers
13	Length of time provided before the election to implement the provisional voting process
7	Clarity of instruction received from your State Government
12	Having enough staff at the polling place
4	Other (specify)
2	All of the above
21	None of the above
2	Don't Know
--	Refused

Please tell me how much you agree or disagree with the following statements about Provisional voting in your jurisdiction for the 2004 Election.

(READ AND ROTATE Q27 –Q35)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

27. More training was needed on how to administer the provisional voting process

(n=400)

18%	Agree strongly
25	Agree somewhat
6	Neither agree nor disagree
22	Disagree somewhat
29	Disagree strongly
1	Don't Know
--	Refused

28. More funding was needed to educate voters about their rights to cast a provisional ballot.

(n=400)

24%	Agree strongly
18	Agree somewhat
11	Neither agree nor disagree
22	Disagree somewhat
24	Disagree strongly
1	Don't Know
--	Refused

29. More information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted.

(n=400)

16%	Agree strongly
17	Agree somewhat
8	Neither agree nor disagree
22	Disagree somewhat
33	Disagree strongly
3	Don't Know
--	Refused

30. More information was needed for poll workers to determine the voter's assigned precinct and polling place.

(n=400)

8%	Agree strongly
18	Agree somewhat
6	Neither agree nor disagree
26	Disagree somewhat
39	Disagree strongly
3	Don't Know
--	Refused

31. More time was needed to implement provisional voting procedures.

(n=400)

16%	Agree strongly
17	Agree somewhat
6	Neither agree nor disagree
27	Disagree somewhat
33	Disagree strongly
1	Don't Know
--	Refused

32. The provisional voting system was easy to implement.

(n=400)

33%	Agree strongly
32	Agree somewhat
6	Neither agree nor disagree
15	Disagree somewhat
14	Disagree strongly
--	Don't Know
--	Refused

33. The provisional voting system in my polling jurisdiction enabled more people to vote.

(n=400)

40%	Agree strongly
27	Agree somewhat
8	Neither agree nor disagree
9	Disagree somewhat
15	Disagree strongly
1	Don't Know
--	Refused

34. I feel that voters in my jurisdiction were provided adequate information to successfully cast a provisional ballot.

(n=400)

70%	Agree strongly
22	Agree somewhat
3	Neither agree nor disagree
3	Disagree somewhat
2	Disagree strongly
1	Don't Know
--	Refused

35. Adequate support was provided to me to assist in the implementation of provisional voting.

(n=400)

57%	Agree strongly
29	Agree somewhat
5	Neither agree nor disagree
6	Disagree somewhat
3	Disagree strongly
--	Don't Know
--	Refused

Recommendations for the Future

36. Now I am going to read you a list of items. Please tell me which one you believe is the most important change needed in the implementation of provisional voting.

(RANDOMLY ROTATE 1-4)

(n=400)

29%	More funding for poll worker training
18	More time for poll worker training
19	Clearer instruction from the Federal Government
12	Clearer instruction from the State Government
5	Other: specify
2	All of the above
14	None of the above
2	No changes needed
1	Don't Know
--	Refused

In general, please tell me how much you agree or disagree with the following statements about provisional voting.

(READ AND ROTATE Q37-Q44)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

37. A statewide voter registration database, accessible to poll workers on Election Day, would decrease the need for voters to cast provisional ballots.

(n=400)

34%	Agree strongly
19	Agree somewhat
7	Neither agree nor disagree
20	Disagree somewhat
20	Disagree strongly
2	Don't Know
--	Refused

38. A state-sponsored website designed for individuals to check registration status online, before going to the polling place on Election Day, would decrease the need for voters to cast provisional ballots.

(n=400)

45%	Agree strongly
25	Agree somewhat
6	Neither agree nor disagree
9	Disagree somewhat
15	Disagree strongly
2	Don't Know
--	Refused

39. Provisional voting speeds up and improves polling place operation on Election Day by resolving disputes between voters and poll workers.

(n=400)

25%	Agree strongly
23	Agree somewhat
5	Neither agree nor disagree
18	Disagree somewhat
30	Disagree strongly
1	Don't Know
--	Refused

40. Provisional voting helps election officials maintain more accurate registration databases.

(n=400)

27%	Agree strongly
24	Agree somewhat
8	Neither agree nor disagree
16	Disagree somewhat
24	Disagree strongly
2	Don't Know
--	Refused

41. Provisional voting creates unnecessary problems for election officials and poll workers.

(n=400)

31%	Agree strongly
21	Agree somewhat
5	Neither agree nor disagree
19	Disagree somewhat
24	Disagree strongly
1	Don't Know
--	Refused

42. Provisional voting can be avoided by simplifying registration procedures.

(n=400)

28%	Agree strongly
16	Agree somewhat
6	Neither agree nor disagree
20	Disagree somewhat
29	Disagree strongly
2	Don't Know
--	Refused

43. There is a need to offer voters the opportunity to cast provisional ballots.

(n=400)

44%	Agree strongly
28	Agree somewhat
4	Neither agree nor disagree
8	Disagree somewhat
17	Disagree strongly
1	Don't Know
--	Refused

44. The provisional voting system in my polling jurisdiction was a <u>success</u>.

(n=400)

59%	Agree strongly
30	Agree somewhat
5	Neither agree nor disagree
3	Disagree somewhat
4	Disagree strongly
1	Don't Know
--	Refused

45. Which one of the following do you think would be the most effective in increasing the number of provisional ballots validated and ultimately counted in an election?

(RANDOMLY ROTATE 1-3)

(n=400)

20%	In-precinct provisional voting only
40	Provisional voting from a central location rather than in individual polling places
19	In-jurisdiction provisional voting only
2	Other (specify)
1	All of the above
12	None of the above
7	Don't Know
--	Refused

46. Which one of the following do you think would be the most effective in reducing the number of provisional ballots cast in an election?

(RANDOMLY ROTATE 1-5)

(n=400)

26%	Having a statewide voter registration database available at polling places
6	Providing additional staff such as "greeters" at polling places to direct voters to the correct polling location
28	Providing a state sponsored website to enable individuals to check registration status online before going to the polling place
5	Providing poll workers access to an updated printed list of eligible voters in the jurisdiction
16	Providing a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction
1	Other (specify)
4	All of the above
13	None of the above
2	Don't Know
--	Refused

Demographics (ASK ALL)

I only have a few more questions for statistical purposes....

D1. As election official were you hired, appointed, promoted, or elected to the position?

(n=400)

14%	Hired
42	Appointed
2	Promoted
42	Elected
1	Other/Specify
--	Don't know
--	Refused

D2. For how many years have you served as the election official? [CODE IN WHOLE NUMBERS – IF LESS THAN 1 YEAR RECORD AS "LESS THAN ONE YEAR"]

(n=400)

LESS THAN 1 YEAR	1%
1	4
2	7
3	5
4	5
5	7
6	4
7	5
8	3
9	3
10	7
11	2
12	5
13	3
14	5
15	7
16	4
17	1
18	4
19	2
20	3
21	1
22	2
23	2
24	1
25	1
26	1
27	2
28	2
29	1
30	1
31	--
32	--
33	1
34	1
35	1
36	--
38	--
43	--

D3. Interviewer please record gender.

71%	Female
29	Male

That completes our survey. Thank you very much for your time and cooperation.

APPENDIX D:

VERBATIM RESPONSES

*****VERBATIM EAGLETON NATIONAL SURVEY OF LOCAL ELECTIONS OFFICIALS'*****

2. What was your job title on Election Day, November 2nd, 2004?

Q2	ACCESSOR/RECORDER/COUNTY CLERK\REGISTAR OF VOTERS
Q2	ADMISTRATIVE ASSISTANT SUPERVISOR ELECTIONS
Q2	ASSISTANT ADMIN
Q2	ASSISTANT EXECUTIVE DIRECTOR OF ELECTION COMMISSION
Q2	ASSISTANT REGISTRAR
Q2	asst rgiter of voters
Q2	Asst. Registrar of Elections
Q2	auditer
Q2	auditor
Q2	chairwoman
Q2	chief clerk
Q2	Chief Elections Officer
Q2	clerk of county commisions
Q2	Clerk of Elections
Q2	CO-MANAGER
Q2	COLLECTOR |
Q2	county auditer
Q2	county auditor
Q2	county clerk election authority
Q2	COUNTY COMM CLERK
Q2	county election officer
Q2	COUNTY ELECTION OFFICER
Q2	county of registrar
Q2	democrat comissioner
Q2	DEPUPTY COMISSIONER
Q2	DEPUTY CLERK IN CHARGE OF ELECTIONS
Q2	DEPUTY CLERK SUPERVISOR
Q2	DEPUTY ELECTION OFFICER
Q2	DEPUTY ELECTIONS COMMISSIONER
Q2	Deputy General Register
Q2	dir of voter registration and elections
Q2	DIRECTION COMISSIONER
Q2	electioin supt.
Q2	ELECTION BOARD ADMIN

Q2	election board secretary
Q2	election deputy
Q2	ELECTION DIVISIONS MGR
Q2	election officer
Q2	ELECTION OFFICER
Q2	election official
Q2	ELECTION SUPER
Q2	election superintendant
Q2	election superintendent
Q2	ELECTION SUPERINTENDENT
Q2	election superitendent
Q2	Elections Admin
Q2	elections administrater
Q2	ELECTIONS SUP
Q2	EXEC DIRECTOR BOARD OF ELECTIONS
Q2	FULTON COUNTY CLERK AND RECORDER
Q2	General REegistar
Q2	general registrar
Q2	GENERAL REGISTRAR
Q2	IN CHARGE OF PROVISIONAL BALANCE
Q2	judge
Q2	Local Election Official
Q2	overseeres
Q2	Rebgistrar
Q2	Region 2 Election Supervisor
Q2	regisrtar of voters
Q2	registar of voter
Q2	registra of voters
Q2	registrar of voters
Q2	Registrar of Voters
Q2	REGISTRAR OF VOTERS
Q2	Republican election commishioner
Q2	Republican Elections Commisioner
Q2	Republican Registrar of Voters
Q2	SEC OF TULSA COUNTY ELECTION BOARD
Q2	senior clerk register assistant
Q2	sherriff
Q2	SPECIALIST /ELECTIONS COORDINATOR
Q2	SUPERINTENDENT
Q2	SUPERINTENDENT OF ELECTIONS
Q2	supt, of elections
Q2	voter of registrar
Q2	voter register
Q2	VOTER REGISTRATION ADMINISTRATOR

5. In your opinion, which one of the following, if any, created the most need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

Q5	a lot of ppl have moved from one town to another and they weren't registered
Q5	ADDRESS CHANGES
Q5	change of address
Q5	college students (ellab) registered voters couldnt get home to vote!!
Q5	fail to change the address
Q5	FAILED TO REPORT ADDRESS CHANGE SO IN WRONG PRECINCT
Q5	inspector error
Q5	MOST HAD MOVED OUT OF A DIFERENT JURISDICTION
Q5	moved and no address change
Q5	MOVING FROM ONE PRECINCT TO ANOTHER
Q5	not registered
Q5	NOT REGISTERED IN PROPPER PLACE - ADDRESS CHANGES
Q5	NOT REGISTERED WITHIN 5 YEARS
Q5	OUT OF PRECINCT
Q5	they have moved within the county
Q5	they sd they didn't get their ballot and some were military
Q5	Unreported Move - their name does not show on their new address' voting precinct
Q5	voter fail to update their registration
Q5	Voter going to wrong polling place
Q5	VOTER WENT TO INCORECT POLLING PLACE
Q5	voters moved
Q5	VOTERS MOVED
Q5	VOTERS MOVING FROM ONE COUNTY TO ANOTHER OR WITHIN THE COUNTY AND NOT UPDATING THEIR REGISTRATION
Q5	voters not registered
Q5	voters showed up to wrong precinct
Q5	voters voting in the wrong precinct
Q5	voters were at wrong precinct
Q5	wrong precient

6. In your opinion, which one of the following, if any, was the most important reason that provisional ballots cast in your jurisdiction were not validated and ultimately not counted in the 2004 Election?

Q6	b/c they were not voters..
Q6	Combination of not being registered, also individual voted incorrect precinct (else)no
Q6	Individual registered in wrong county
Q6	individual was not registered in the right state
Q6	judge did not put provisional envelopes in ballot box
Q6	MEDIA DID NOT UNDERSTAND WHAT PROVISIONAL VOTING
Q6	NO SIGNATURE AT ALL
Q6	none
Q6	pirch for 10 year skip and voting
Q6	POLL WORKER DID NOT COMPLETE FORM CORRECTLY(ELSE)NO
Q6	There was confusion due to the newness of the provisional ballot procedure
Q6	THEY WERE IN THE WRONG COUNTY COLLEGE STUDENTS REGISTERED INOTHER COUNTIES
Q6	were not completed properly\

14. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

Q14 NO POLL WORKERS IN OREGON

22. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

Q22	THERE WAS ONLY ONE AND HE WAS INFORMED IN PERSON
Q22	voters were given written documents informing them on how to inquire about their votes

26. Now I am going to read you a list of items, please tell me which one you believe presented the <u>biggest</u> challenge in implementing provisional voting in your jurisdiction for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

Q26	
Q26	access to the voters after the election
Q26	age of the poll workers
Q26	getting the poll workers to understand what I was explaining. Implementing the provisional ballot and the purpose of a provisisional ballot was the biggest challenge in getting the poll workers to understand what this meant.
Q26	having enoug ballots
Q26	having the voter get and understand the information
Q26	lack of awareness of voter's opportunity for provisional voting
Q26	MISREPRESENTATION OF PROVISIONSL BALLOTING WAS THE KEY PROBLEM
Q26	NOT ENOUGH TIME TO VALIDATE THE BALLOT AFTER ELECTION OFFICE
Q26	people saying go anywhere and get a provisional ballot.. it was falsified information given through newspapers and political parties
Q26	POLL WORKERS MISUNDERSTOOD WHAT PROVISIONAL BALLOTS WERE FOR / PUBLIC EDUCATION
Q26	state worker getting back to us
Q26	the staff, not enough
Q26	to verify that they were a valid provisional voter after the election the research was quuite involved and time consuming
Q26	verification

36. Now I am going to read you a list of items. Please tell me which one you believe is the most important change needed in the implementation of provisional voting.

Q36	accessibilty for the voters
Q36	CHANGES IN STATE LAW
Q36	clearer instructions from both state and federal on who can vote provisional ballots
Q36	clearer intruction to the voter
Q36	Elimation of provisional voting should be dumped
Q36	ELIMINATE IT
Q36	MAKING THE FEDERAL AND STATE GOVERNMENTS TO AGREE ON WHO SHOULD AND WHERE THEY CAST PROVISIONAL BALLOTS
Q36	more correct information from the media
Q36	MORE EDUCATION FOR VOTERS...GENERAL INFO EDUCATION
Q36	more funding in every aspect in provisional voting, it has become very costly and time consuming (else) if the polls have to close for any reason, anyone who has not voted has to use a provisional vote, it is very costly, at 40
Q36	more simpler
Q36	more technical work force (ellab) if we could provide a laptop.. we did not have this, we need help in recruiting... what I would like to see is vote centers for provisional ballots..
Q36	NOT ENOUGH TIME TO VALIDATE VOTE AFTER THE ELECTION
Q36	PUBLIC EDUCATION ON PROVISIONAL VOTING
Q36	REGISTERATION OF THE VOTERS, AND THE VOTERS BEING MORE AWARE OF THE VOTING PROCESS
Q36	they need to look at the whole system... the system does not allow enough time from the time the provisional ballots are cast and the time they are actually counted is 3 days... therefore we dont have enough time to inquire more
Q36	VOTER AND PUBLIC EDUCATION - VOTER NEEDS TO KNOW WHAT A PROVISIONAL BALLOT IS
Q36	voters need to be trained
Q36	VOTERS SHOULD EDUCATE THEMSELVES BETTER. THE INFORMATION IS AVAILABLE TO THEM.

45. Which one of the following do you think would be the <u>most effective</u> in increasing the number of provisional ballots validated and ultimately <u>counted</u> in an election?

Q45	DON'T WANT TO INCREASE
Q45	how to correct provisional to educate the public.
Q45	INCREASE PROVISIONAL VOTING IN REGULAR VOTING PLACES (ELSE)NO
Q45	NOT ENOUGH TIME FOR VALIDATION AFTER ELECTION
Q45	they need to have provisional voting in BOTH a central location and in-precient location as well
Q45	UPDATE REGISTRATION BEFORE DEADLINE
Q45	VOTERS TAKE RESPONSIBILITY FOR REGISTRATION

46. Which one of the following do you think would be the most effective in reducing the number of provisional ballots cast in an election?

Q46 advanced voting
Q46 VOTERS UPDATE REGISTRATION

D1. As election official were you hired, appointed, promoted, or elected to the position?

D1	elected then turned out to be appointed
D1	I WAS ELECTED AS A PROBATE JUDGE PART OF THAT JOB IS SUPERVISING ELECTIONS
D1	INHERITTED

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:42 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Materials for Sept. 6 Meeting

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
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Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:40 AM -----

"Tom O'neill"
[redacted]
09/05/2005 10:48 PM

To klynndyson@eac.gov
cc
Subject Materials for Sept. 6 Meeting

Karen:

Attached are 3 documents that will be topics of discussion at our meeting tomorrow. The Power Point presentation is included so you will have a complete file (and as a backup in case something goes wrong with the version I am bringing.)

The "Script" document is a simple, MS Word version of the Power Point presentation. You might want to print out copies for those who would like to follow along and make notes on the slides as they are discussed.

The third document is the "Alternatives" paper we will discuss after the Power Point presentation. It outlines alternative points that might be included in the preliminary guidance document, which is the next deliverable in the project. We hope to learn which alternatives are preferred by the EAC so that we will know which ones should be developed further for the Preliminary Guidance Document. I hope you might be able to have this duplicated and distributed to those attending the meeting.

Thanks. I look forward to seeing you tomorrow.

Tom O'Neill

ALTERNATIVESSept6.doc Briefinfg90605.ppt ScriptSept.605.doc

Briefing for

U. S. Election Assistance Commission

September 26, 2005

Briefing for

U. S. Election Assistance Commission

September 6, 2005

QUESTIONS –TOPICS OF SPECIAL INTEREST

1. **How did states prepare for HAVA's provisional voting requirements?**
2. **How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?**
3. **How did litigation affect the implementation of Provisional Voting?**
4. **How effective was provisional voting in enfranchising qualified voters?**
5. **Did State and local processes provide for consistent counting of provisional ballots?**
6. **Did local election officials have a clear understanding of how to implement provisional voting?**

1. How did states prepare for HAVA's provisional voting requirements?

Interviews told us how election officials prepared to administer the process.

Most received provisional voting instructions from state government.

The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- **Only about 1 in 10 made available to poll workers a voter registration database.**
- **Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**

Wide variance existed in preparation to give voters a way to find out if their provisional ballots had been counted.

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

18 states were new to provisional voting; 25 others had experience.

Local election officials in the "old" states felt more confident.

9 out of 10 local officials in the "old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "new" states.

"New" state officials felt:

- **Voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted.**
- **More funding was needed to educate voters about their rights to cast a provisional ballot.**

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

Difference in performance even more marked:

- Provisional ballots in “old states” = more than 2% of the total vote, 4 times the proportion in “new” states.
- Counting provisional ballots in the final vote, the “old” states averaged nearly double the number of the “new” states.
- In “old” states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the “new” states.

Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

Question 3: How did litigation affect the implementation of Provisional Voting?

Lawsuits filed shortly after Election Day to alter the outcome of a close election failed, but established principles:

- **States are not required to count provisional votes cast in the wrong precinct**
- **Provisional ballots cast at the correct polling *site* but at the wrong precinct are to be counted (New York)**
- **Provisional voters are to be protected against poll worker or clerical error (New York, Washington)**

Question 3: How did litigation affect the implementation of Provisional Voting?

Litigation is most useful when it:

- **Occurs early in the process**
- **Does not seek to change the outcome of a race**
- **Aims to enhance the accuracy of the provisional voting process**

Question 3: How did litigation affect the implementation of Provisional Voting?

Conclusions

- Litigation is more likely to yield a public benefit if it seeks to assure the accuracy of the provisional voting process, rather undo election results.
- Sensitive questions should not be resolved by the judiciary at a frenzied pace.
- Expect more litigation if states do not begin now to address ambiguities and problems that surfaced in the 2004 election.

Question 3: How did litigation affect the implementation of Provisional Voting?

Policy Implications

Guidance to the states on how to encourage earlier, rather than later, litigation

"Preferred practice" for states to preclude post-election challenges that could have been filed in a pre-election lawsuit.

States can distinguish between the two kinds of suits by providing a streamlined administrative remedial process for voters who believe their provisional ballot rights were mistreated and a more burdensome judicial proceeding to contest an election result.

Focus litigation on the ways state laws are allegedly deficient to:

- **Clarify the rules applicable to provisional voting**
- **Assure that the rights protected by provisional voting laws are enforced**

How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1,2 million voters, or 1.01% of turnout. These voters otherwise would have been turned away at the polls.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

Whatever the precise figure, there is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the "new" states.

Experience factor: mechanical or cultural?

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country.

A few states accounted for most of the ballots cast.

- The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.
- Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the Voter ID requirements and registration status, the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast.

Those without databases counted more than double that rate (44%).

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In-precinct versus out-of-precinct states had different outcomes.

States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

In "old" states, this difference was greater.

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.

If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In both "new" and "old" states, counties differed by as much as 90% to 100% in the rate at which ballots were cast and counted.

<u>But differences between old and new states persisted:</u>

- **Officials from "old" states counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.**
- **Officials from "new" states needed more information for voters about the jurisdiction where provisional ballots must be cast in order to be counted and needed more time to implement provisional voting procedures.**

- **Officials from "new" states felt that provisional voting created unnecessary problems for election officials and poll workers.**

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Conclusions

States have considerable latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for “new” states, consistency may increase more quickly.

Did local election officials have a clear understanding of how to implement provisional voting?

How do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 felt poll workers needed more training to understand their responsibilities.

Second, objectively how well did the process appear to be managed?

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

DISCUSSION

THE 6 QUESTIONS

ALTERNATIVES OUTLINE

DRAFT FOR COMMENT

OUTLINE OF ALTERNATIVES

For Consideration In Drafting Preliminary Guidance on Provisional Voting
September 6, 2005

This outline identifies 7 areas where guidance from EAC could improve the provisional voting process.

EAC's guidance should strike a rational balance among the three competing objectives of ballot access, ballot security, and procedural reliability and practicality. The outline sketches a range of alternatives for the EAC. Based on the EAC's judgment about which alternatives it can embrace, we will develop appropriate recommendations for the guidance document.

Possible Criteria for evaluating alternatives and choosing among alternatives:

1. The electoral system must be able to collect, record, and tally the votes of the electorate with sufficient accuracy to declare a winning candidate whose victory is procedurally legitimate in the eyes of supporters and opponents alike. Second, no well-functioning electoral system would fail to provide or count a ballot cast by a properly registered voter who correctly completed all steps required to receive one. (Century Foundation/10)

2. Margin of Litigation – need a system robust enough to perform well under the pressure of a close election.

3. Enfranchisement rate –the percentage of eligible voters who are able to participate.

4. Voter satisfaction standard – degree to which voters believe the system meets their needs and provides an avenue of participation.

Elements influencing the performance of the provisional voting system

THE PROCESS

A. Registration

B. Pre-Election Information For Voters

C. At The Polling Place

D. Evaluating The Ballot

E. Post-Election Information For Voters

BROADER CONSIDERATIONS

F. Integrity And The Appearance Of Integrity

G. Continuous Assessment Of The Provisional Ballot -- Process And Performance (Quality Improvement Model)

INTRODUCTION
THE IMPORTANCE OF CLARITY AND IDENTIFICATION OF BEST PRACTICES

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

State efforts to improve the provisional voting process are already underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from guidance that includes concrete descriptions of best practices. A best practice approach in the guidance document is likely to advance the adoption of provisional voting practices that should be standard across the country while recognizing diversity among the states.

ALTERNATIVES FOR EACH STEP IN THE PROCESS

A. Registration

Improving the registration system can forestall the need to cast a provisional ballot, and is therefore among the most important possible reforms.

1. Registration rules should be clear and to forestall post-election disputes about their interpretation.

2. If states require identification at the time of registration, the kind of IDs required should be stated precisely, in plain English, and be publicly available in a graphical form that all voters can understand, for example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency. "

3. If there is one place to sign an affirmation of citizenship and age (and/or mental capacity), and that is signed, the failure to check any box that refers to the aforementioned should not be deemed a material omission.

4. States should consider testing a modified system of voter registration. A voter who registers earlier than 60 days before Election Day would be guaranteed that administrators will . That voter will be able to vote by regular ballot. For those who register within 30 days of the election, administrators would still be expected to ensure the orderly processing of the registration, but such voters will not be guaranteed that if there is a problem with their application that they will be able to vote by a regular ballot. This two-tiered registration system could reduce post-election disputes.[1]

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[1] See: http://moritzlaw.osu.edu/electionlaw/comments/2005/comment0322.html. This suggestion relates directly to California's experience after shortening the deadline for registration to 15 days from 29, which contributed to the state's overwhelming reliance on provisional ballots. Had the election in California been close, the contention over provisional ballots could have been destabilizing.

5. States should issue a receipt with a tracking number to each person submitting a registration form. The tracking number will allow the voter to check on registration status through the use of that numbe. r and a publicly available registration list. The receipt could serve as an "admission ticket" to a regular ballot, even if the voter's name was not on the poll worker's list. [2]
6. States should have clear rules with respect to whether registration forms collected by third parties are processed as mail-in or in-person registrations.
7. Registration forms submitted by third-party groups should be considered mail-in registrations subject to those ID requirements. But if giving a registration form to a third-party group is considered equivalent to giving the form to a Board of Elections, or DMV, official then the law should say so explictly.
8. The re-enfranchisement process should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic or no more burdensome than the process required for any new registrant.[3]
9. A provisional ballot should seek from the voter all the information necessary to constitute registration and be filed by local officials with the proper office to complete the registration process.

B. Pre-Election Information For Voters

The better voters understand their rights and obligations, the easier the system will be to manage and the more legitimate the appearance of the process.

1. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate the casting of a regular nallot.
2. This same information should be Included on sample ballots
3. Publish this information shortly before the election in prominent newspaper announcements and, if feasible, through broadcast media.

C. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot.

1. The organization of the polling place, particularly the multi-precinct polling place is important. Guidance should provide best practices on the Importance of greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and relation topics.

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[2] There could be two different kinds of receipts: one would be simply confirm that an individual submitted a registration form by the required deadline; the other, more robust, would confirm that the voter was officially registered

[3] From The Century Foundation Report

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting.

3. Offer a best practice on estimating the number of provisional ballots that should be made available at each precinct, so that they don't run out on Election Day

4. Offer a best practice on the handling of provisional ballots between the time they are cast to when they are examined afterward

5. Offer best practices in training and scripting poll workers so that they ask the right questions, offer the right information, and make provisional ballots available appropriately – particularly important when a voter shows up at the wrong precinct.

D. Evaluating the Ballot

The clarity of criteria is critical to a sound evaluation process and to the legitimacy of the system as a whole.

1. The experience in 2004 in North Carolina, Washington, Ohio underline the importance of clarity in the criteria to be used in deciding if a provisional ballot should be counted. Rushed litigation over the evaluation of provisional ballitng could erode the legitimacy of a presidential election. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation." Nonetheless, the NY *Panio v. Sutherland* case shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

2. Recent legislation in Arizona indicates that this guidance should reiterate HAVA's requirement that persons appearing claiming to be registered voters cannot be denied a ballot because they do not have identification with them.

3. Voters who lack ID should have up to three days to provide either the HAVA-specified forms of ID or other documentation that will facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered by mail. This research has shown that voters seem to feel returning with ID is less onerous that signing an affidavit.

4. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct. The best practice may be to define "jurisdiction" more broadly than the precinct. Or, more modestly, If a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count as long as the voter appears at the correct polling site.[4]

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

5. The best practice for election officials to evaluate a provisional ballot includes a check of existing records, including the original registration form, in order to match signatures.

6. Public confidence in the process of evaluating and counting provisional ballots requires that the process be open to the public and conducted by a team of election officials whose decision will be reviewed by a Board of Elections (or similar body) if the decisions was not unanimous.

7. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed.

8. The standards used for eligibility of provisional voters should be made clear in state law that specifies the "burden of proof" to be met. For example, a provisional ballot will not be rejected unless officials find *by clear and convincing evidence* that voter is ineligible; or provisional ballot will not be counted unless all available evidence shows that voter *more likely than not* is eligible

9. Clear standards are needed for the essential information that must be appear on provisional ballot envelope: name, address, signature, etc. The standards should indicate that a provisional ballot does not count if it lacks this information. The standards should provide voters a reasonable opportunity provide the missing information. (For example, election officials have no duty to inform the voter of the error, but if voters appear at the Board of Elections within 72 hours on their own initiative they can supply the missing info.)

10. Sates that use the information on the provisional ballot to permit voters whohave changed their addresses to update their registrations, should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

11. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. The guidance document should specify a range of time periods as a best practice (for example: 7 days, 10 days, 14 days, 21 days).

F. Post-election Information for Voters

Timely information for voters provides a final quality control on the system by giving the voter an opportunity to correct mistakes that may cause a legitimate ballot not to be counted.

1. Recommend best practices to improve the use of websites, phone lines, or mail to inform provisional voters about the evaluation of their ballots. The date by which this occurs is critical if voters are to have a reasonable opportunity to correct errors.

2. Specify the administrative review procedures, if any, that are available to a voter who has been told that her provisional ballot was rejected. May she appeal to a higher administrative authority? if so, under what timetable? What evidence may she offer in an effort to demonstrate eligibility?

G. State Laws Governing Litigation Over Provisional Voting

1. State law could foreclose litigation where the purpose is to change the outcome of the election, but a better option appears below.
2. Provide for expedited, streamlined litigation – administrative decisions regarding the eligibility of provisional ballots can be overturned only if *clearly erroneous* based on documentary evidence or a violation of the clearly specified procedures concerning the processing of such ballots
3. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

BROADER CONSIDERATIONS

H. Integrity and the Appearance Of Integrity

1. Non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system?
2. Transparency – require the purging process for registration to be public and with an opportunity to for voters to correct an erroneous determination that they should be purged.
3. Transparency – require the evaluation process for provisional ballots to be public.
4. Training poll workers – provide guidance on how to provide information to potential voters on their options if their names do not appear not on the registration list.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance (Quality Improvement Model)

Defining what constitutes a successful provisional voting systemis difficult. The most successful system is probably not the one with the most provisional votes cast (which may indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted (the evaluation process is likely to be flawed).

Defining quality here requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes.

The first step to improving quality is to recognize the provisional voting process as a system and the consequent need to take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.[5]

But a clear first step is to recommend to the states the metrics they can establish, collect and monitor to evaluate the quality of the provisional voting process and other aspects of the system. Among them might be:

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[5] Perhaps the EAC should engage one of the national quality organizations to evaluate the provisional ballot process within the broader context of the electoral system.

DRAFT

1. Standard deviation of % of provisional ballots counted by county to estimate the consistency of the evaluation system within the state.
2. Set targets to reduce the number of provisional ballots cast as a measure of the quality of the registration system.
3. Election complaints by jurisdiction, from precinct to the state level.

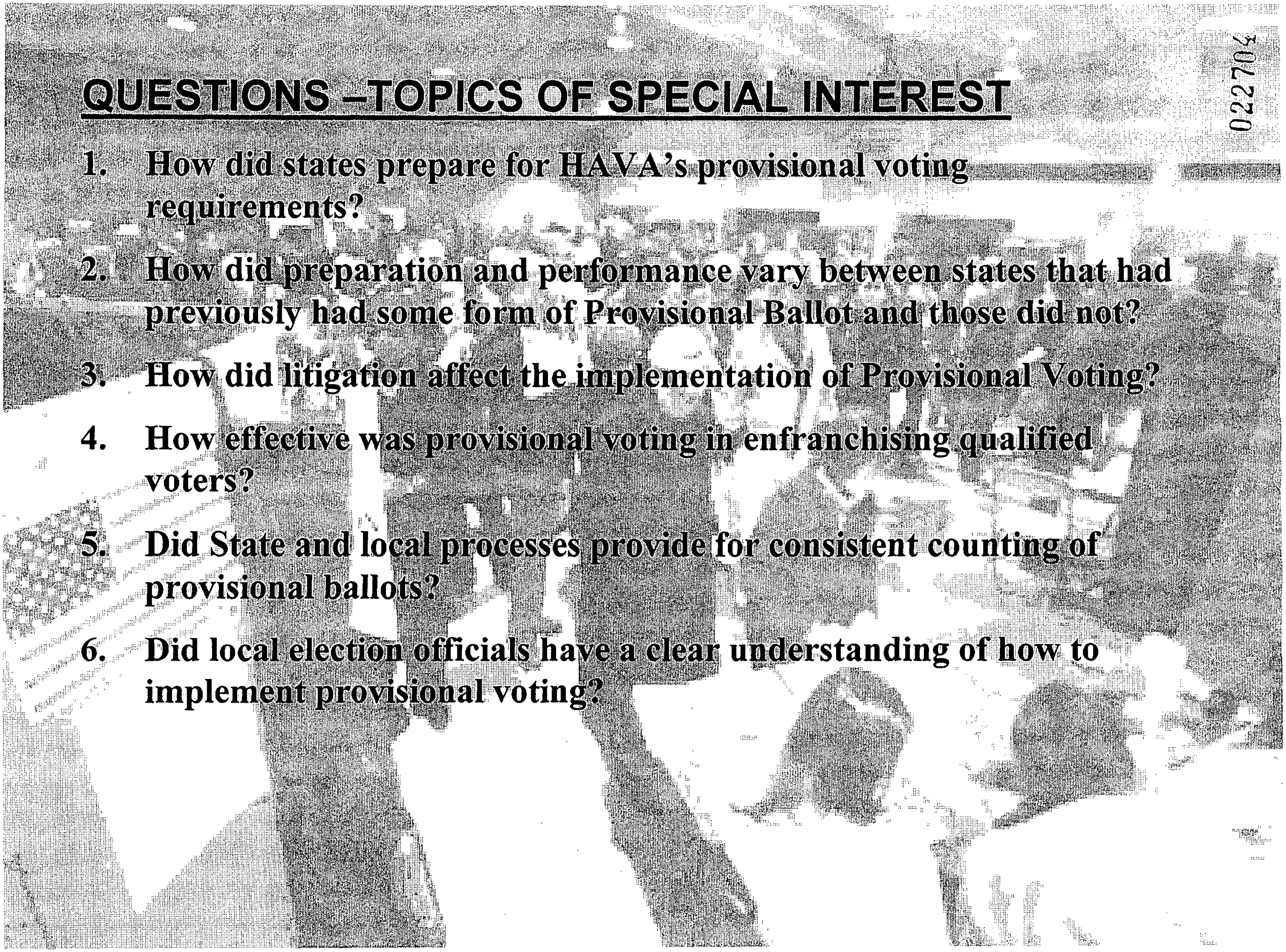
Briefing for

U. S. Election Assistance Commission

September 6 , 2005

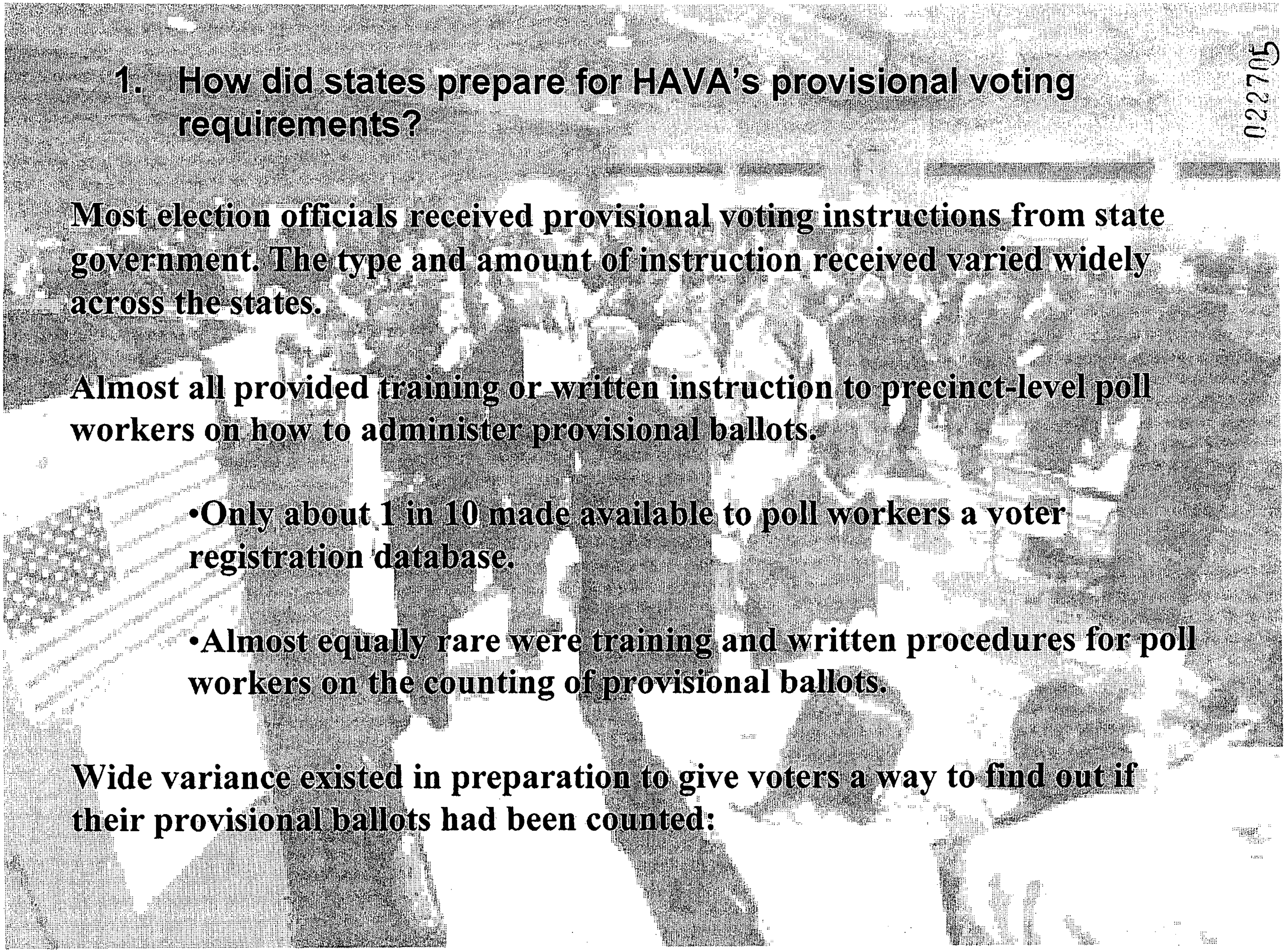
Preliminary Findings

Provisional Voting
&
Alternatives for Guidance Document



QUESTIONS –TOPICS OF SPECIAL INTEREST

1. How did states prepare for HAVA's provisional voting requirements?
2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?
3. How did litigation affect the implementation of Provisional Voting?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did State and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?



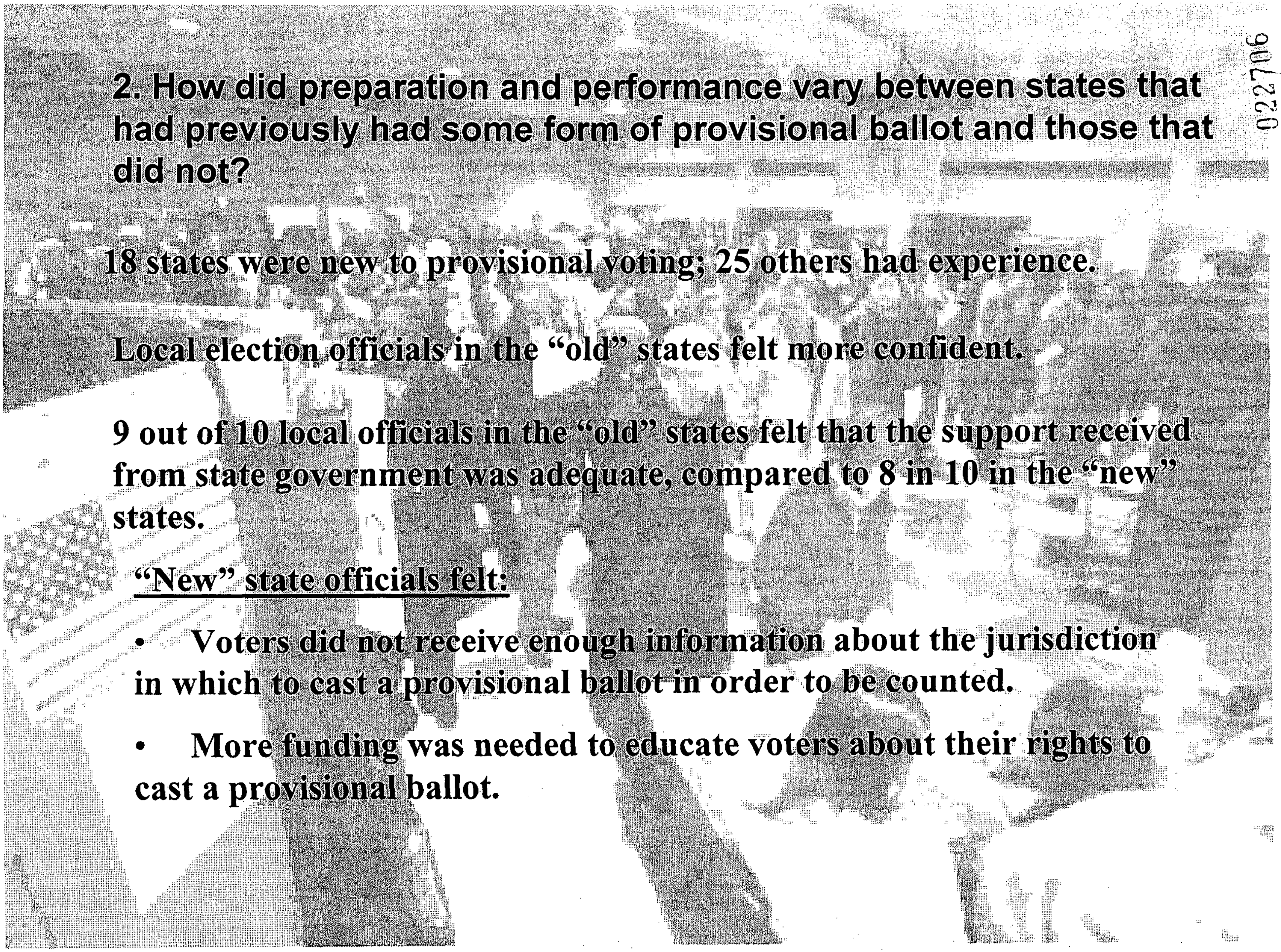
1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- Only about 1 in 10 made available to poll workers a voter registration database.
- Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in preparation to give voters a way to find out if their provisional ballots had been counted:



2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

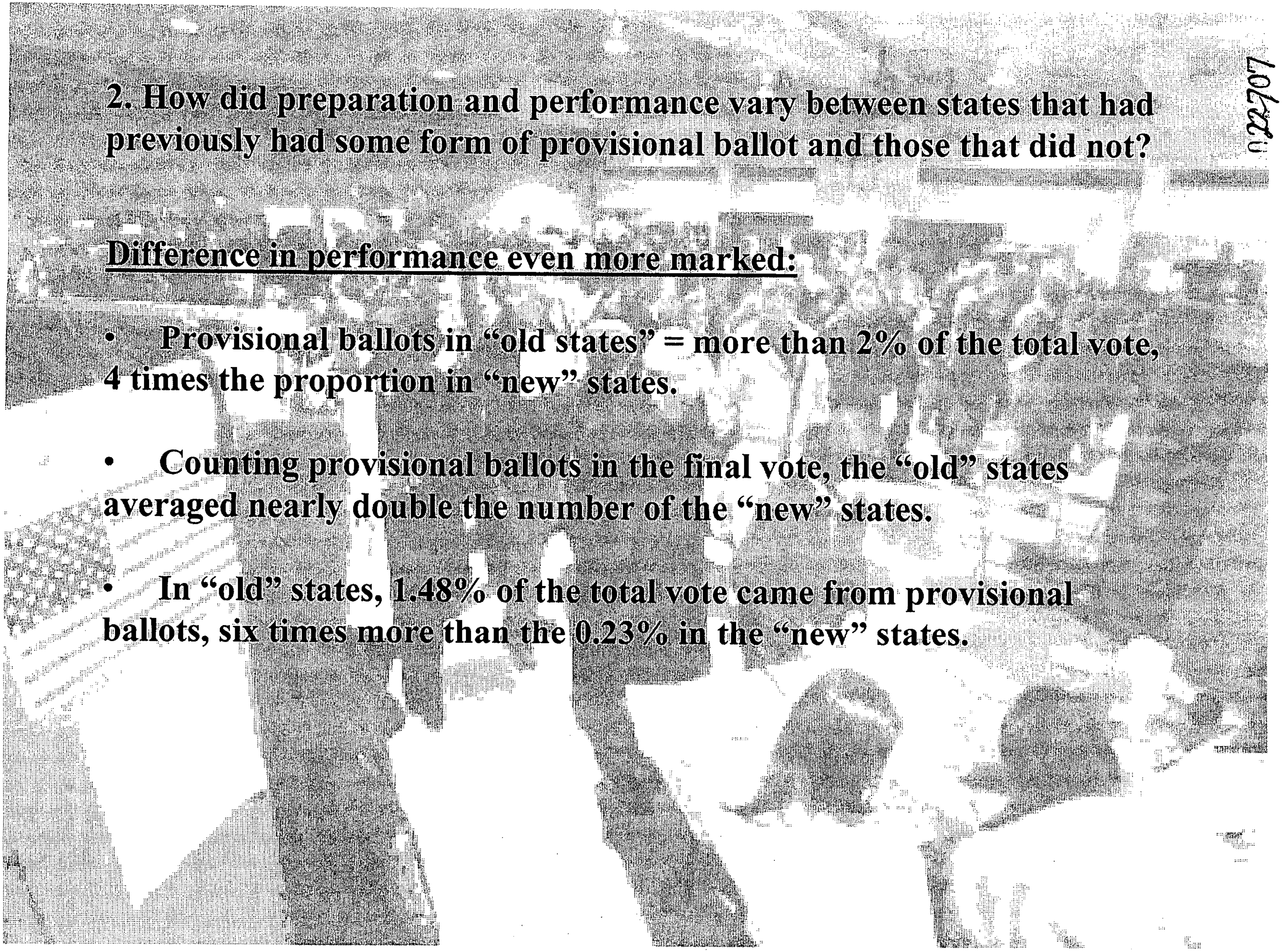
18 states were new to provisional voting; 25 others had experience.

Local election officials in the "old" states felt more confident.

9 out of 10 local officials in the "old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "new" states.

"New" state officials felt:

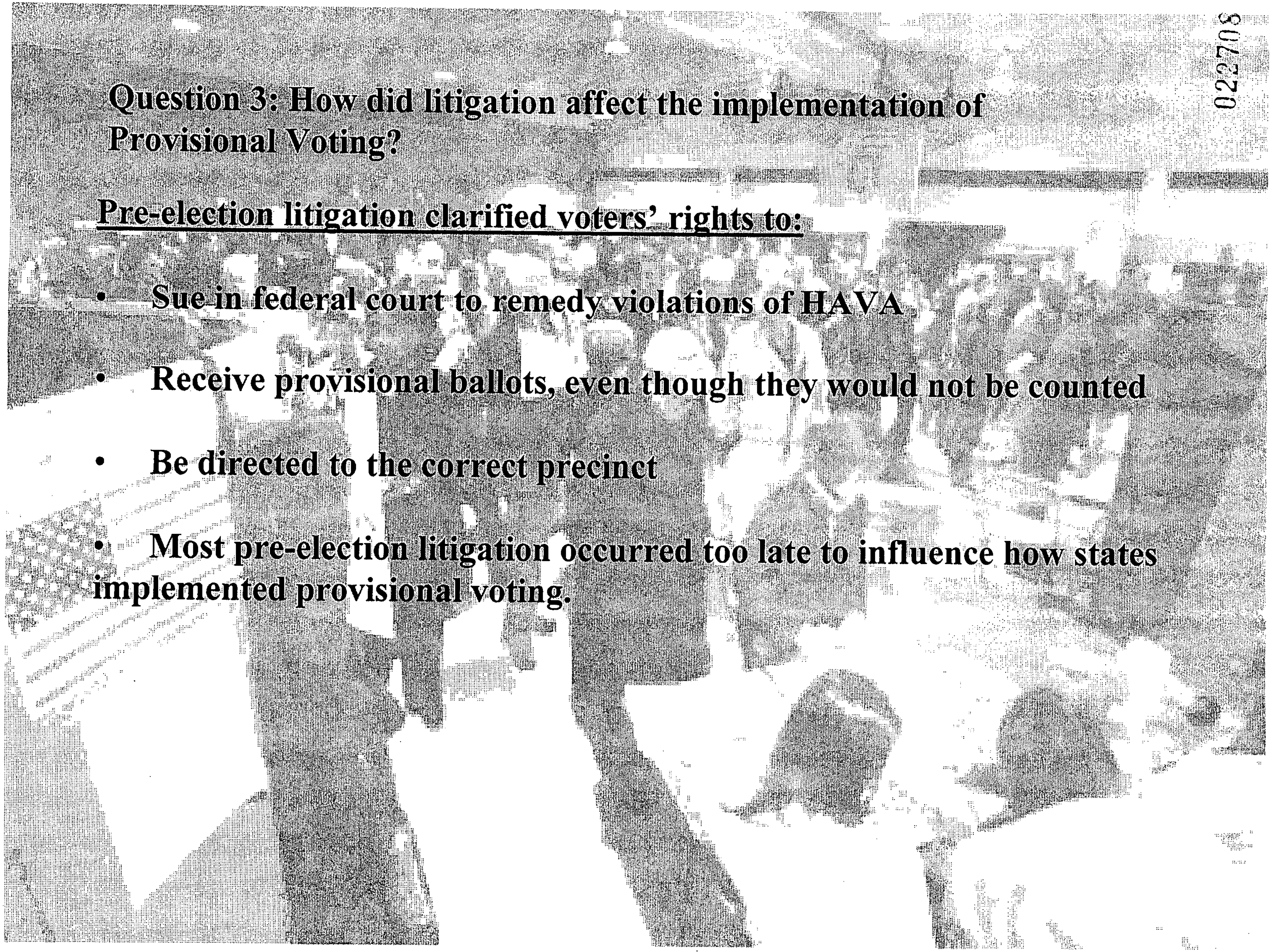
- **Voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted.**
- **More funding was needed to educate voters about their rights to cast a provisional ballot.**



2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

Difference in performance even more marked:

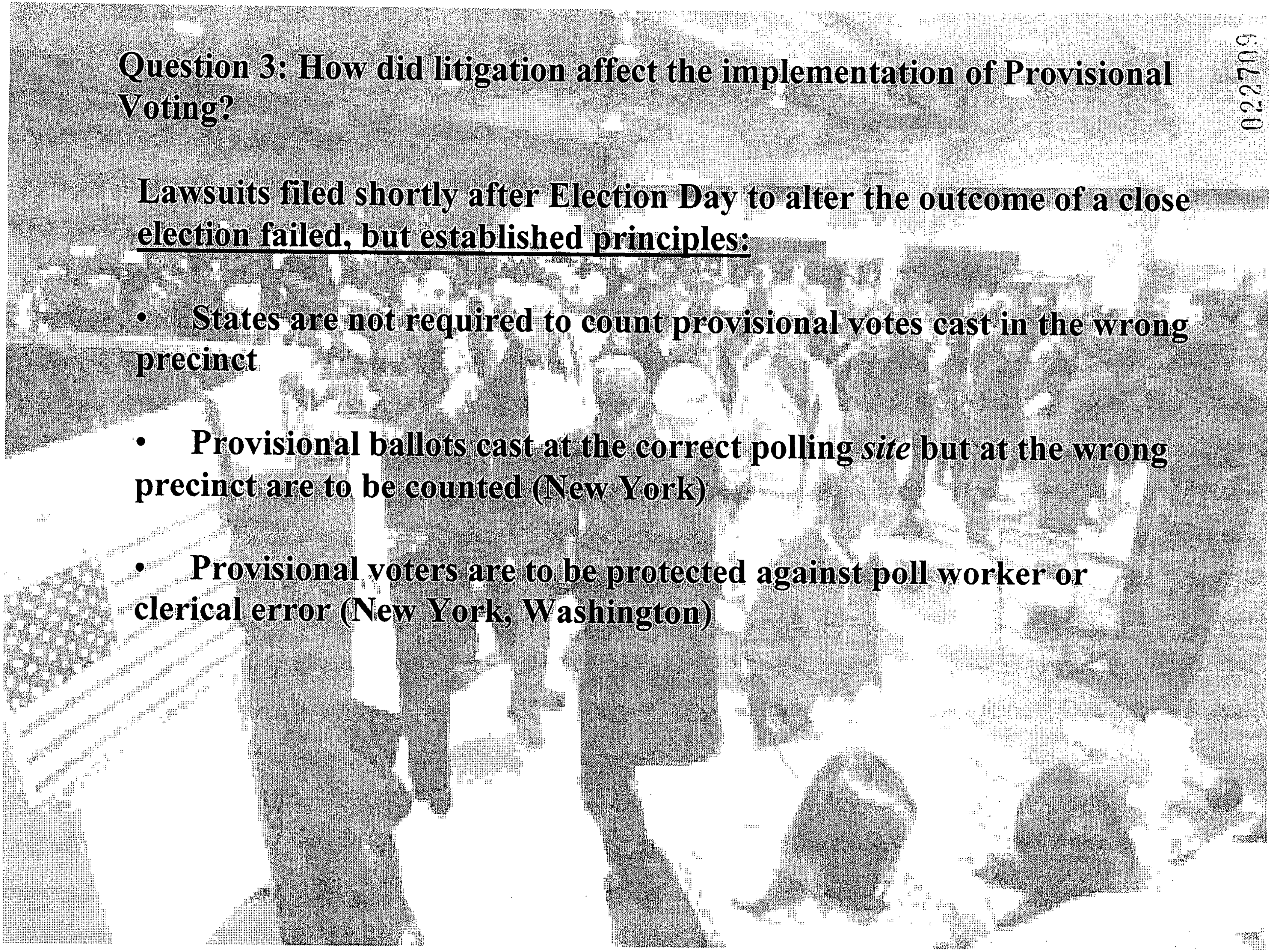
- Provisional ballots in "old states" = more than 2% of the total vote, 4 times the proportion in "new" states.
- Counting provisional ballots in the final vote, the "old" states averaged nearly double the number of the "new" states.
- In "old" states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the "new" states.



Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.



Question 3: How did litigation affect the implementation of Provisional Voting?

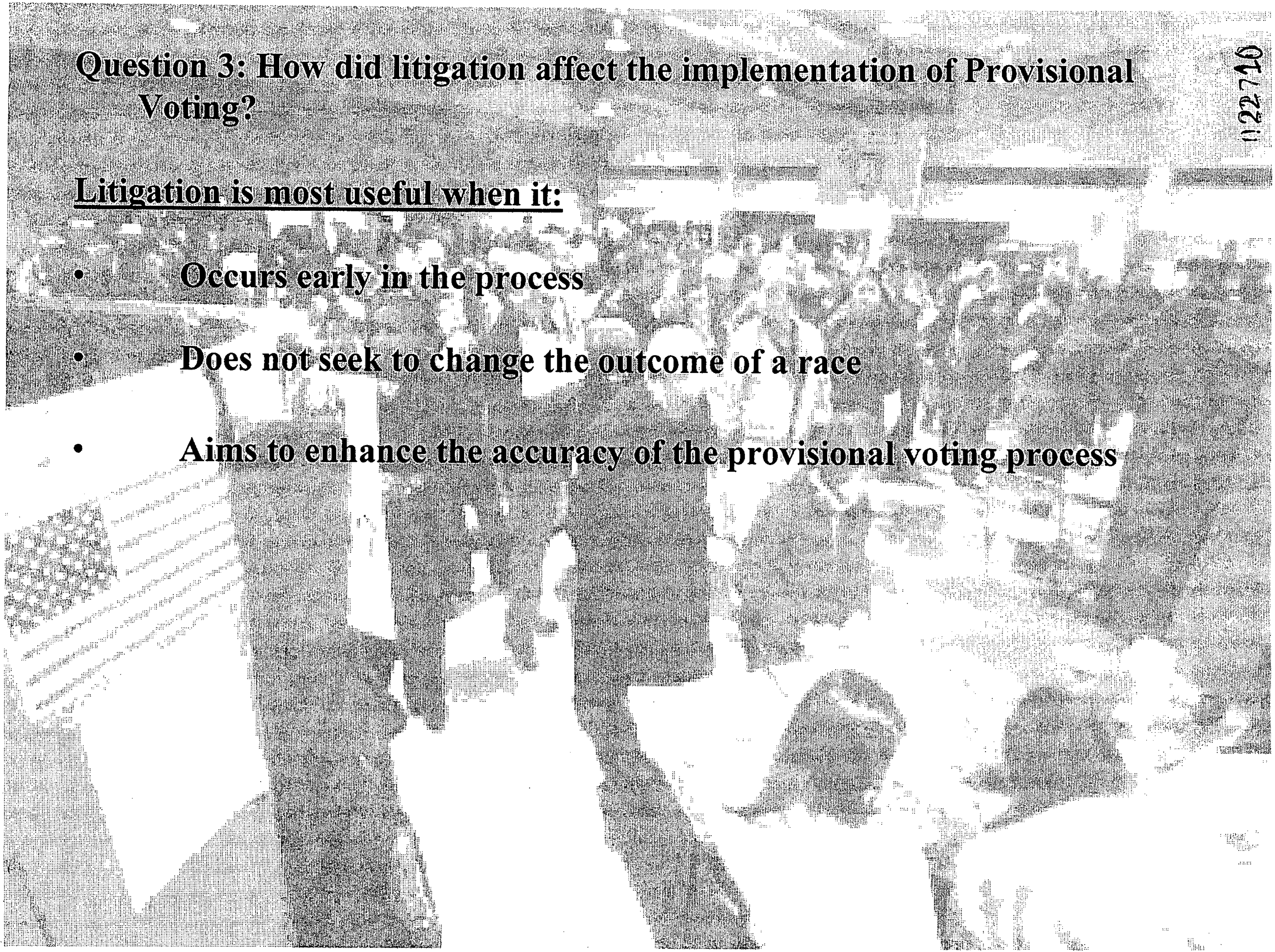
Lawsuits filed shortly after Election Day to alter the outcome of a close <u>election failed, but established principles:</u>

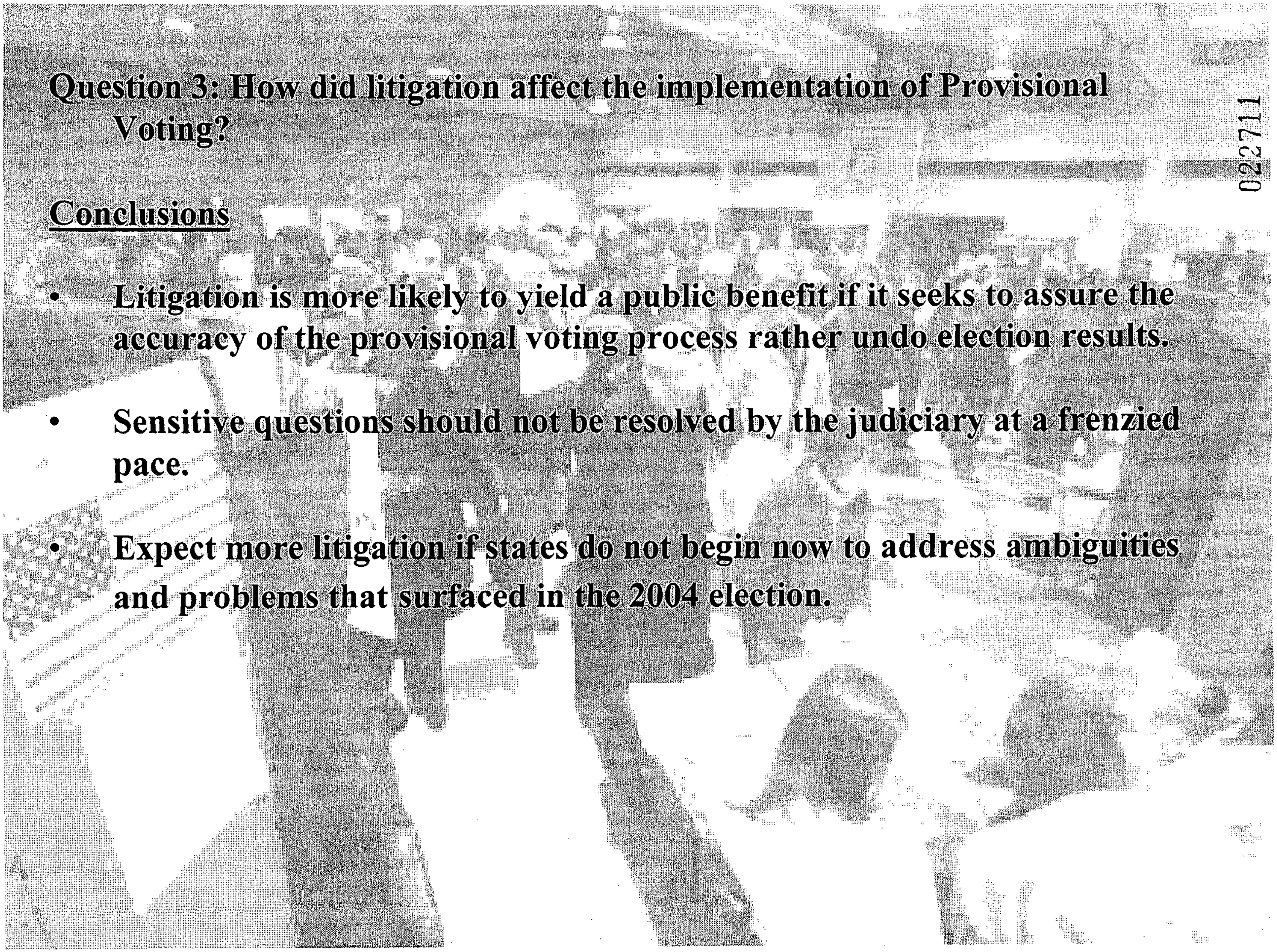
- **States are not required to count provisional votes cast in the wrong precinct**
- **Provisional ballots cast at the correct polling *site* but at the wrong precinct are to be counted (New York)**
- **Provisional voters are to be protected against poll worker or clerical error (New York, Washington)**

Question 3: How did litigation affect the implementation of Provisional Voting?

<u>Litigation is most useful when it:</u>

- Occurs early in the process
- Does not seek to change the outcome of a race
- Aims to enhance the accuracy of the provisional voting process

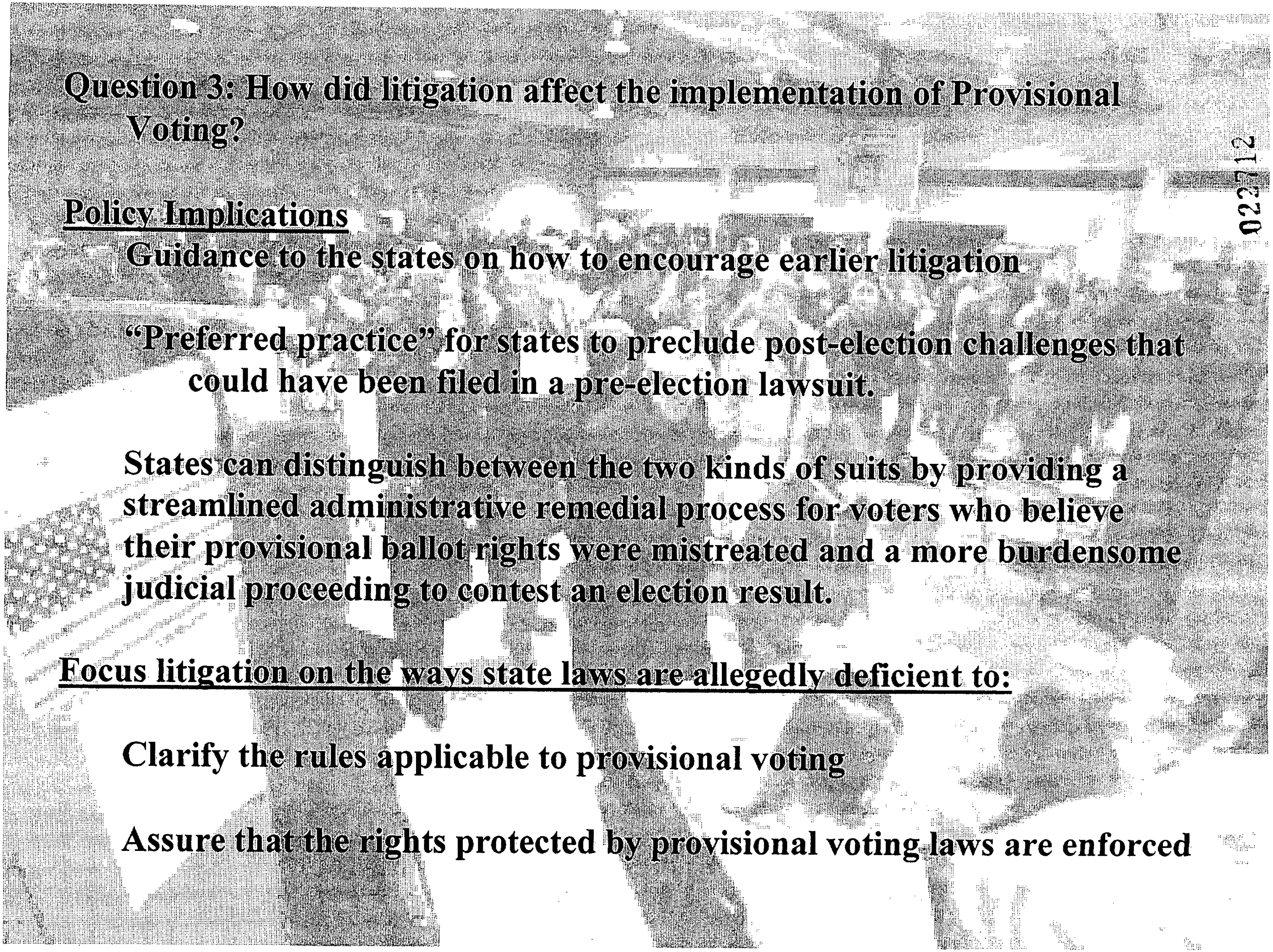




Question 3: How did litigation affect the implementation of Provisional Voting?

Conclusions

- Litigation is more likely to yield a public benefit if it seeks to assure the accuracy of the provisional voting process rather undo election results.
- Sensitive questions should not be resolved by the judiciary at a frenzied pace.
- Expect more litigation if states do not begin now to address ambiguities and problems that surfaced in the 2004 election.



Question 3: How did litigation affect the implementation of Provisional Voting?

Policy Implications

Guidance to the states on how to encourage earlier litigation

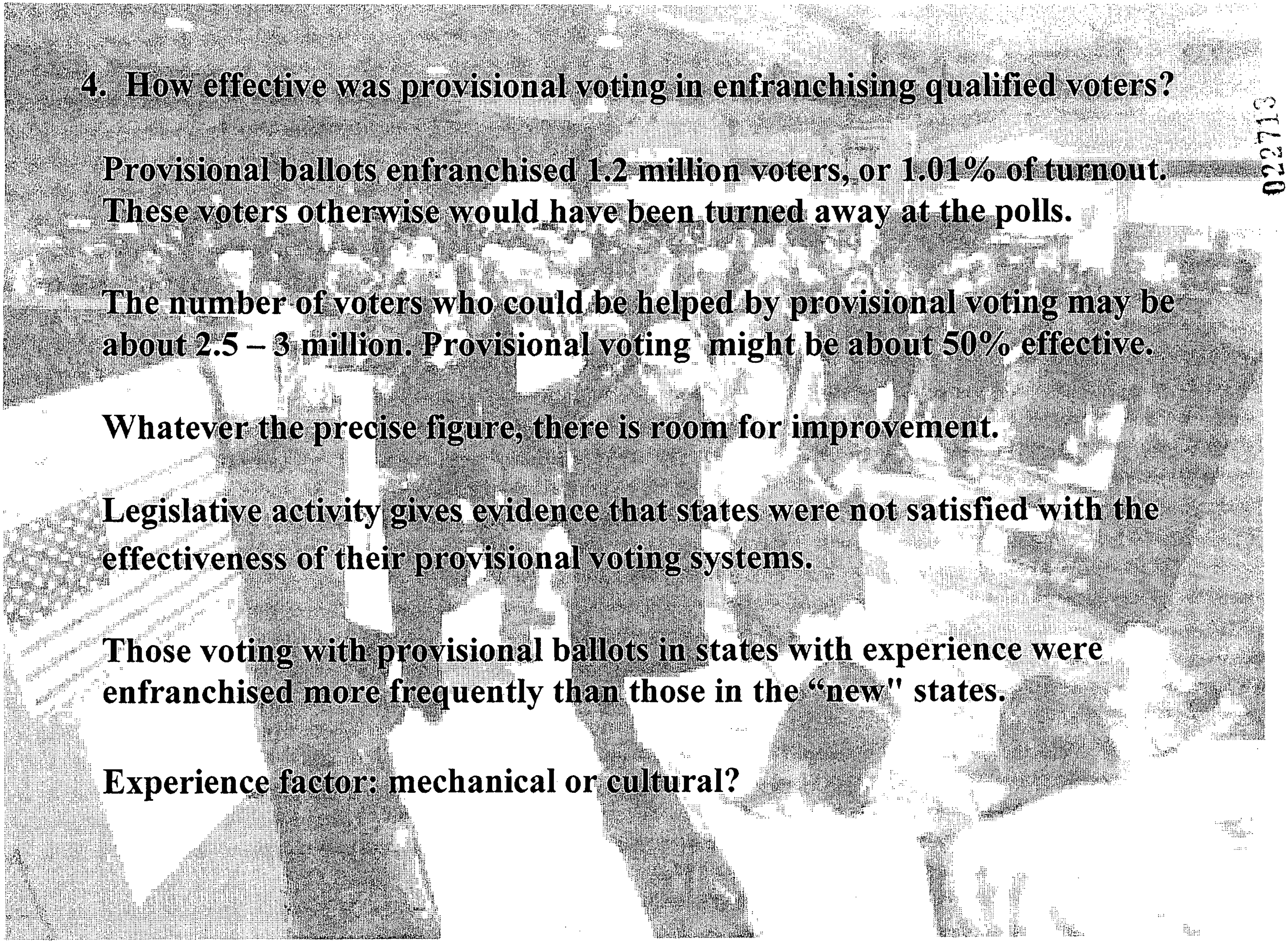
"Preferred practice" for states to preclude post-election challenges that could have been filed in a pre-election lawsuit.

States can distinguish between the two kinds of suits by providing a streamlined administrative remedial process for voters who believe their provisional ballot rights were mistreated and a more burdensome judicial proceeding to contest an election result.

Focus litigation on the ways state laws are allegedly deficient to:

Clarify the rules applicable to provisional voting

Assure that the rights protected by provisional voting laws are enforced



4. How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout. These voters otherwise would have been turned away at the polls.

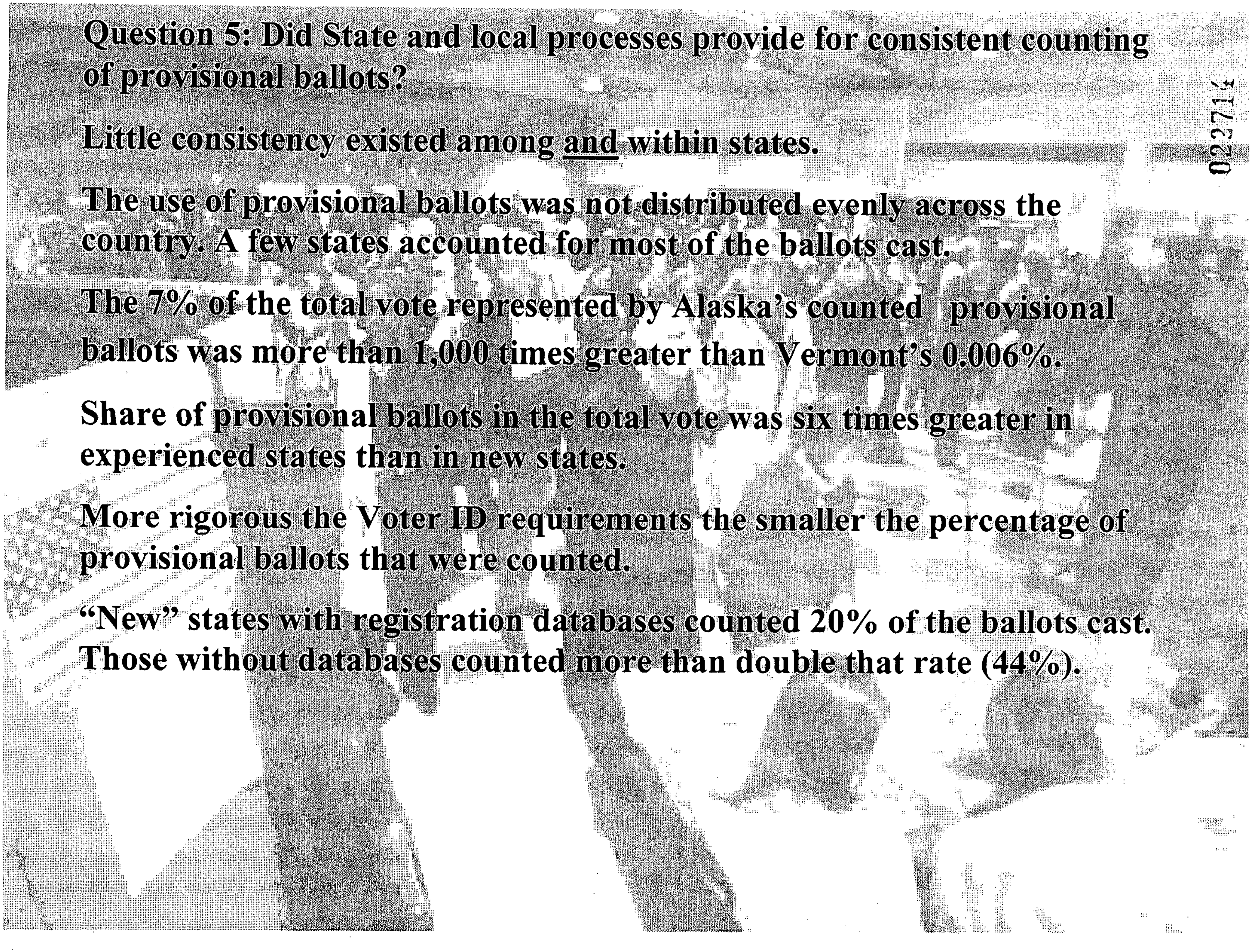
The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

Whatever the precise figure, there is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the "new" states.

Experience factor: mechanical or cultural?



Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Little consistency existed among and within states.

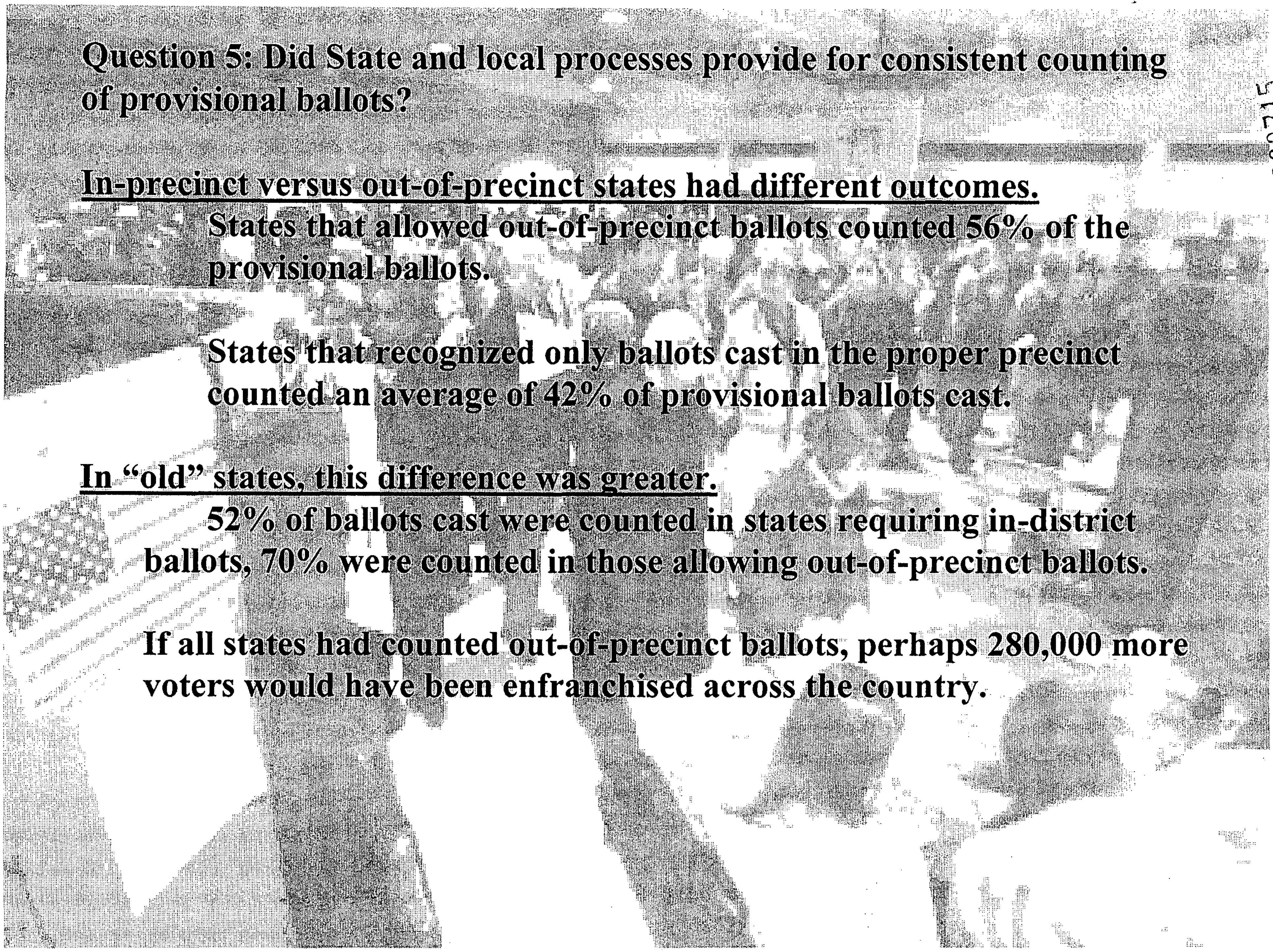
The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.006%.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the Voter ID requirements the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).



Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In-precinct versus out-of-precinct states had different outcomes.

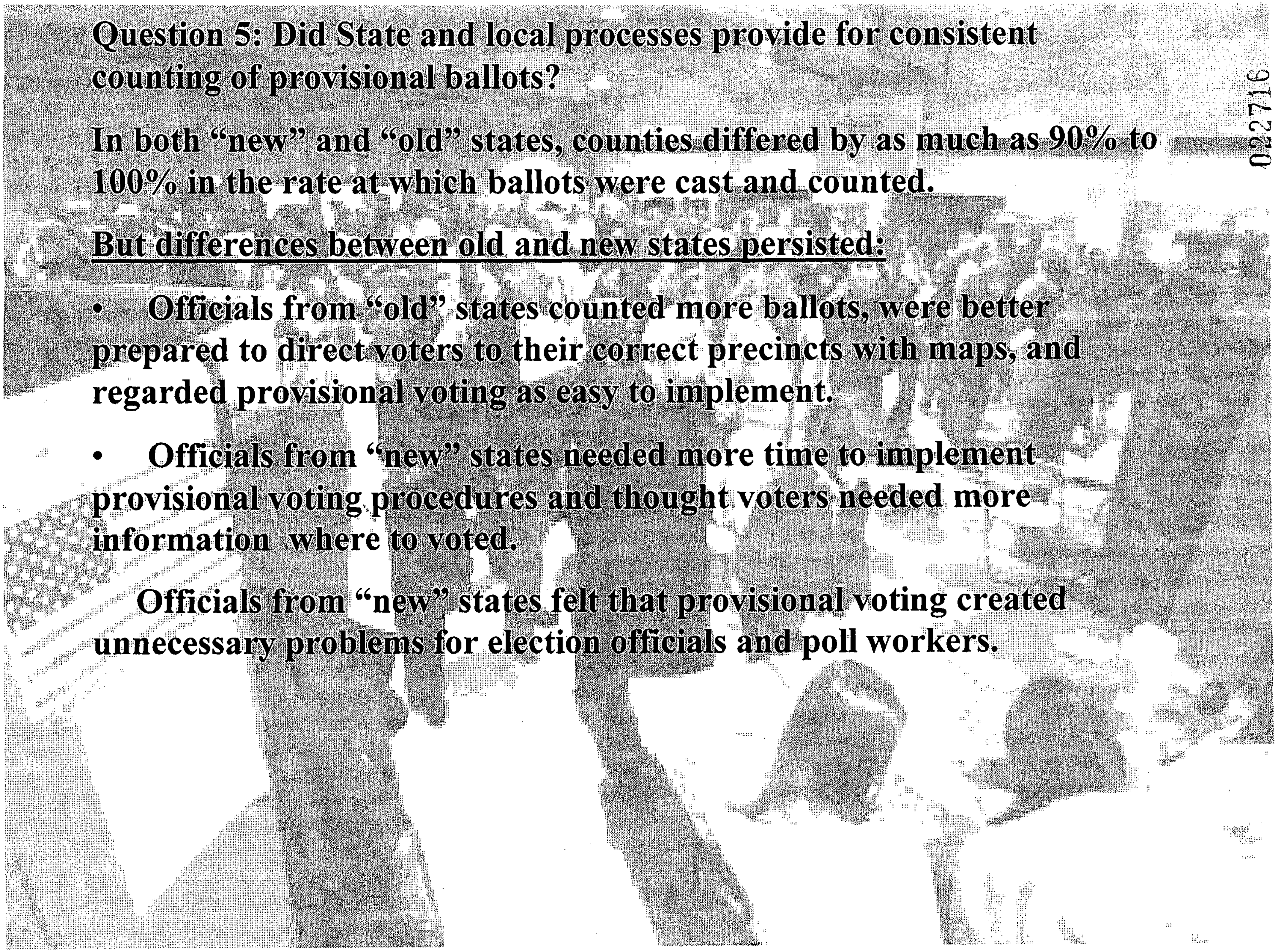
States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

In "old" states, this difference was greater.

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.

If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.



Question 5: Did State and local processes provide for consistent counting of provisional ballots?

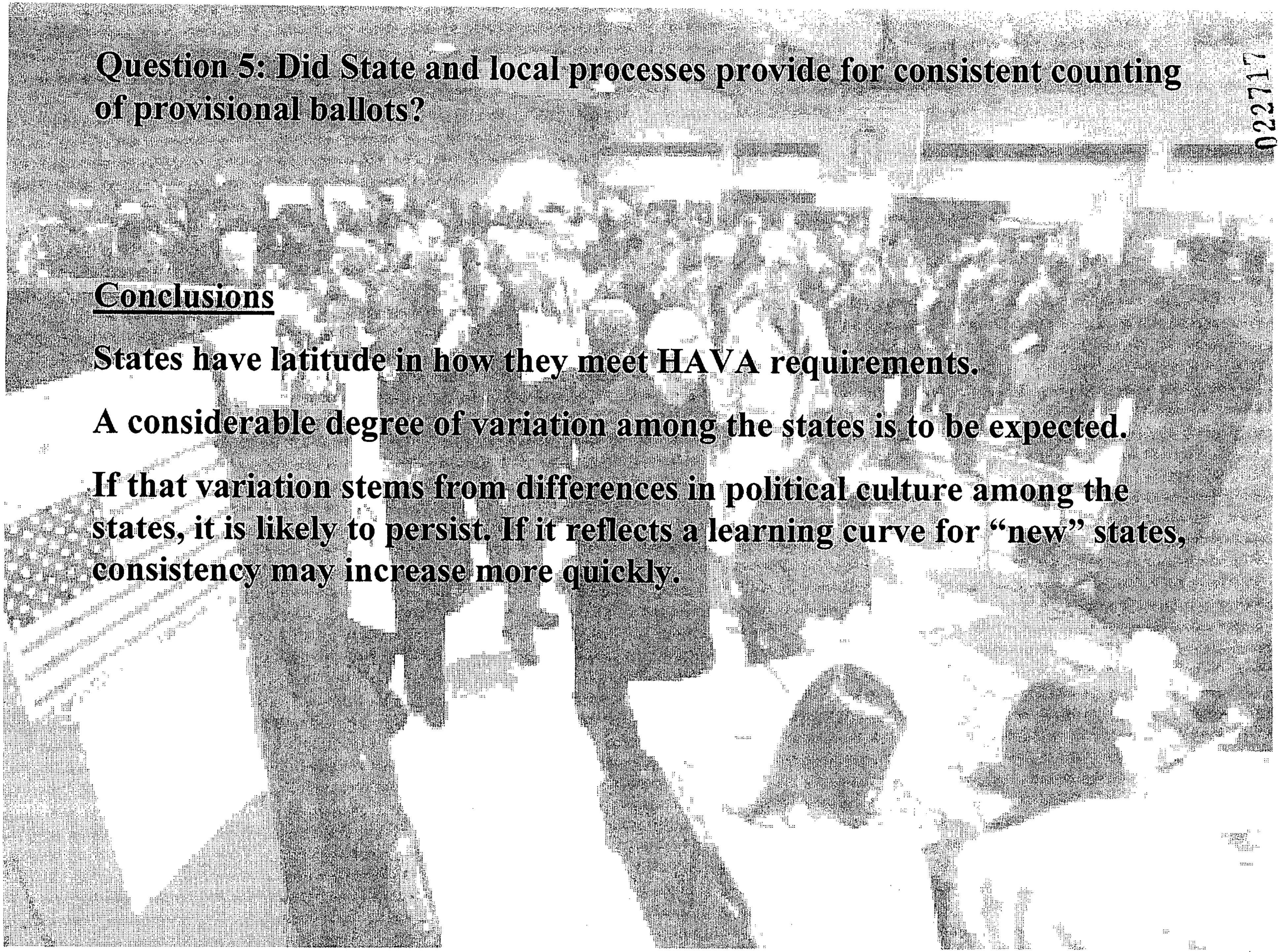
In both "new" and "old" states, counties differed by as much as 90% to 100% in the rate at which ballots were cast and counted.

<u>But differences between old and new states persisted:</u>

- Officials from "old" states counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement.
- Officials from "new" states needed more time to implement provisional voting procedures and thought voters needed more information where to voted.

Officials from "new" states felt that provisional voting created unnecessary problems for election officials and poll workers.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

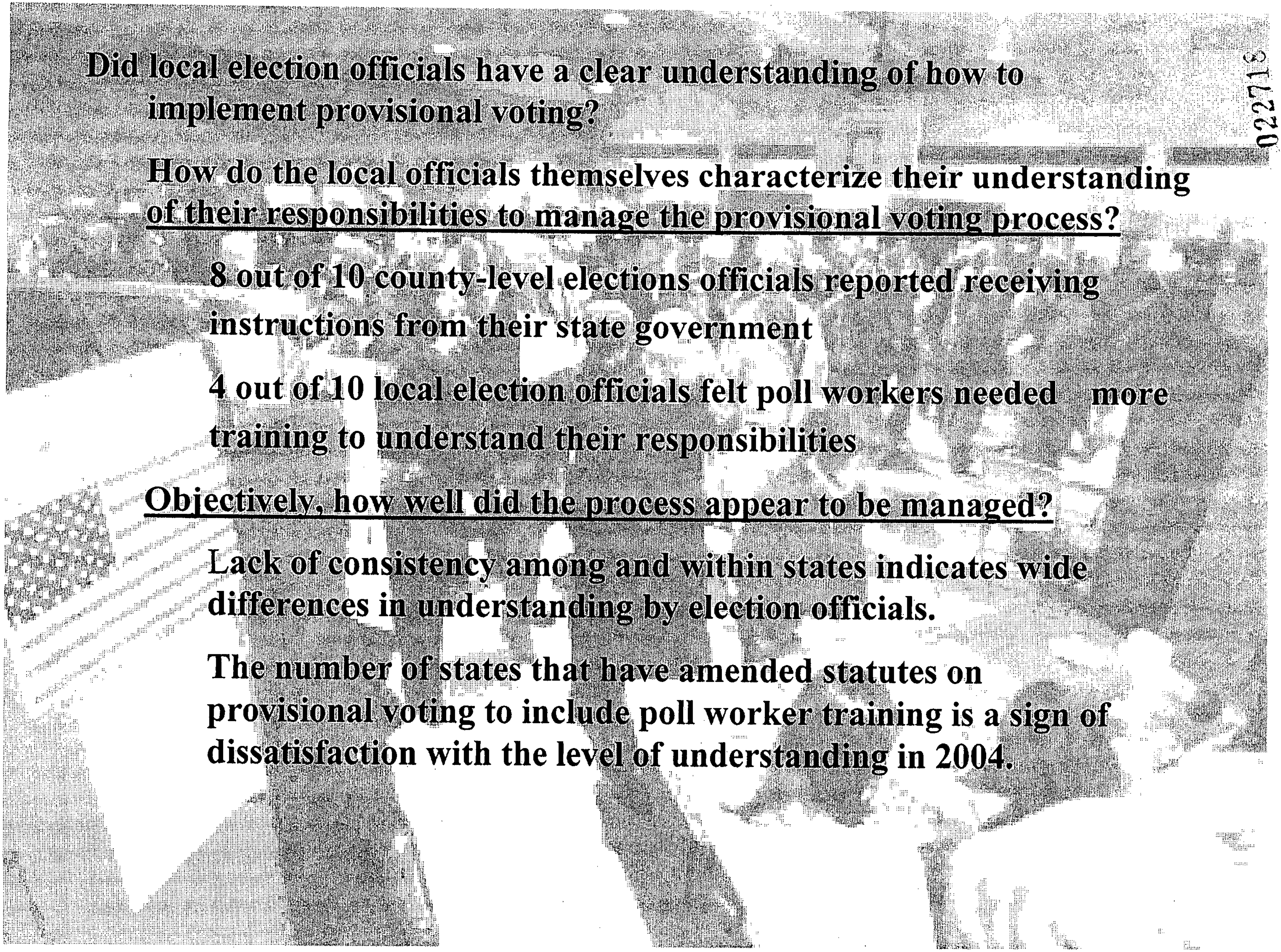


Conclusions

States have latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.



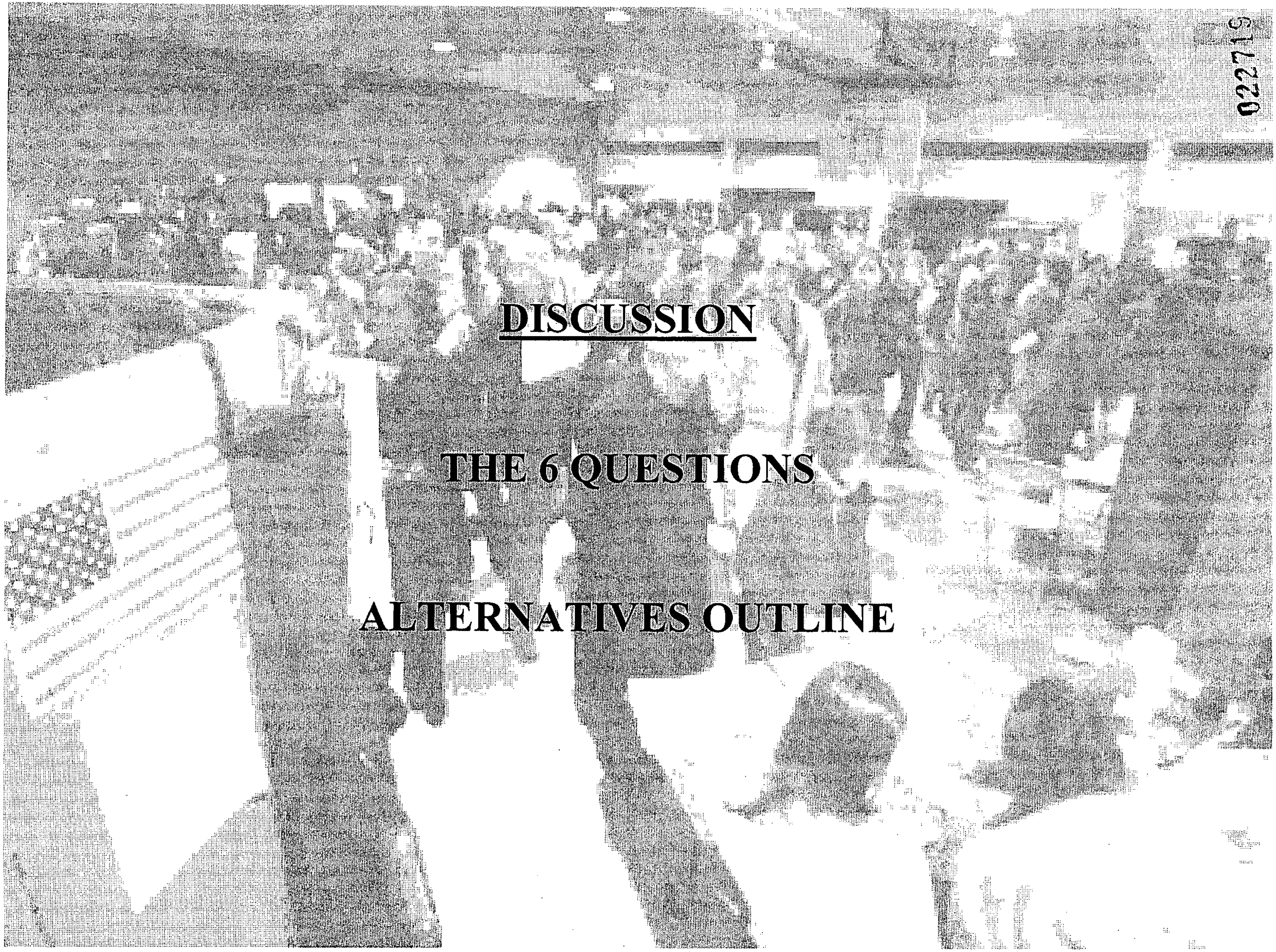
Did local election officials have a clear understanding of how to implement provisional voting?

<u>How do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process?</u>

- 8 out of 10 county-level elections officials reported receiving instructions from their state government
- 4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

<u>Objectively, how well did the process appear to be managed?</u>

- Lack of consistency among and within states indicates wide differences in understanding by election officials.
- The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.



DISCUSSION

THE 6 QUESTIONS

ALTERNATIVES OUTLINE

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:41 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised materials for Sept. 6 Meeting

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:39 AM -----

"Tom O'neill"
[redacted]
09/03/2005 02:46 PM

To klynndyson@eac.gov
cc
Subject Revised materials for Sept. 6 Meeting

Karen,

The hard copy of the materials you received on Friday may have been missing the response to Question 4 (the copy I received did not include it). Several other typographical and other errors also became apparent when I reviewed it today. .

Attached is a revised version of the package that corrects those errors. Please rely on this version to prepare for the meeting on Tuesday. I will bring sufficient copies to hand out before the meeting.

Sorry for the errors.

Tom O'Neill

EAC BRIEFING0906.doc

EAGLETON INSTITUTE OF POLITICS

BRIEFING FOR THE EAC

PRELIMINARY FINDINGS
ON PROVISIONAL VOTING

with

Summary responses to 6 Key Questions

September 6, 2005

Prepared by:
Eagleton Institute of Politics at Rutgers, The State University of New Jersey
Moritz College of Law at the Ohio State University

MEMORANDUM

TO: Commissioners and Staff of the EAC

FROM: Tom O'Neill, Eagleton Institute of Politics

DATE: September 3, 2005

RE: Briefing on Provisional Voting Research

The enclosed draft synthesizes our findings based on the research on provisional voting completed since the start of the project. It is organized as summary answers to the six key questions on topics of particular interest enumerated in the contract.

1) How did states prepare for the HAVA Provisional Voting requirement?
2) How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
3) How did litigation affect the implementation of Provisional Voting?
4) How effective was Provisional Voting in enfranchising qualified voters?
5) Did states and local processes provide for consistent counting of Provisional Ballots?
6) Did local election officials have a clear understanding of how to implement Provisional Voting?

Our discussion on the 6th will revolve around these draft, summary answers. Your comments and reactions to the material will provide direction --a basis for us to complete work on the final report and the preliminary guidance document. We seek the EAC's response and comments to ensure that the research is meeting the needs of Commissioners and staff.

We will also ask for the comments of the Peer Review Group on this draft to provide independent analysis of our approach and methods.

The following materials are enclosed as background for the presentation:

Summary responses to 6 Key Questions regarding Provisional Voting

Appendices:

a) Statistical Review of Provisional Voting in the 2004 Election
b) State Narratives on Provisional Voting
c) Memorandum: Provisional Voting Litigation by Issue
d) Memorandum: Provisional Voting Litigation by State
e) Memorandum: Provisional Voting Litigation

Question 1: How did states prepare for HAVA's provisional voting requirements?

HAVA required all states to develop a process for permitting individuals who state they are registered, eligible to vote and in the proper jurisdiction for voting but are not on the official registration list to do so by provisional ballot. It also directed states to provide a way for provisional voters to find out if their ballots were counted.

For the 25 states that had some form of provisional ballots before HAVA, meeting the requirements meant reviewing and revising, if necessary, their process for provisional voting. The 18 states that were new to provisional voting had to provide for provisional ballots by a new statute or administrative regulation and had to design procedures for pre-election, Election Day and post-Election Day activity. Preparation at the state level is described exhaustively in the collection of state statutes and regulations compiled in this research.

In addition to devising the provisional voting process, states had the responsibility to define "jurisdiction," adopt rules regarding the use of voter identification, and prepare a system to decide which provisional ballots cast should be counted. The states also had the responsibility of providing training or instruction for local election officials who would actually manage the provisional voting process, including training poll workers. Interviews with local election officials, at the county level in most states, provided information to assess how they prepared to administer the process.

Most, but not all, (84 percent) county-level election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states:

- Almost all of those officials received instruction from their state government on how to determine a voter's eligibility to receive a provisional ballot, and they felt the instructions provided were useful.
- Nine out of ten received instruction for providing voters the opportunity to verify if the provisional ballot had been counted as well as instruction establishing guidelines for counting provisional ballots.
- Two out of three received information on using a provisional ballot as an application to update the voter's registration.
- Only about half of those local election officials received instruction on strategies to reduce the need for voters to use provisional ballots.

Although almost all county-level election officials provided training or written instruction to precinct-level poll workers on how to administer provisional ballots, wide disparities existed in other areas of instructions or resources.

- Nine out of ten provided a telephone line for poll workers to speak to an election official with access to a list of eligible voters to determine voters' assigned precinct and polling place.
- Eight in ten furnished local poll workers with access to a list of eligible voters in the jurisdiction.
- Only about 1 in 10 (12 percent) made available to poll workers a statewide voter

registration database.

- Almost equally rare (14%) were training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in how the county-level officials prepared to comply with HAVA's requirement to provide voters a way to find out if their provisional ballots had been counted:

- Seven in ten of those officials provided the main telephone number for the local or county election office;
- About half (47 percent) used mail notification;
- Four in ten provided a dedicated toll-free telephone hotline;
- About 1 in 5 (22%) offered this information through a website, and about half that number offered email notification.

Question 2: How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?

In the 2004 election, 18 states were new to the process of provisional voting, while 25 others had experience with similar methods of "fail-safe voting." Local election officials in the "old" states felt more confident in their ability to administer the provisional voting process:

- Almost three-quarters (74%) of local election officials in the "old" states found implementing the provisional voting system was "easy," but that was true of just over half (56%) of officials in the "new" states.
- About half (49%) of officials in the "new" states felt that more training was needed on how to administer the provisional voting system. Less than 40% of officials in the "old" states felt that way.
- Nine out of ten local officials in the "old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "new" states.

In some functions there was little difference in the preparation for provisional voting by "old" and "new" states. For example, in both subgroups, about half (54%) of county-level officials received from their state governments little information about "strategies to reduce the need for voters to use provisional ballots." But for other functions, training varied widely in both type and amount between the two subgroups:

- More officials in "old" states (7 in 10) than "new" (6 in 10) received state instruction on the design of the provisional ballot.
- By a similar margin, more "old" state officials received instruction about using the provisional ballot as an application to update the voter's registration.

The "new" state officials believed that voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted, and they felt that more funding was needed to educate voters about their rights to cast a provisional ballot:

- Four out of ten officials in the "new" states, compared with 3 out of 10 in the "old" stated that more information should have been provided to voters about the jurisdiction in which the ballot had to be cast.
- Also, four out of ten in the "new" states felt that more time was needed compared with just over a quarter (26%) of those in "old" states.

When we move from preparation to performance, the importance of experience becomes sharply clear. In the "old" states, provisional ballots represented over 2% (2.11%) of the total vote. In the "new" states, that number was less than one-fourth of that, 0.47%. How the ballots were then evaluated also showed significant differences between "old" and "New." In ruling ballots legitimate and including them in the final vote, the "old" states averaged nearly double the number of the "new" states, 58% to 32%. In "old" states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the "new" states.

Question 3: How did litigation affect the implementation of Provisional Voting?

SUMMARY: Litigation just before the 2004 election upheld the principle that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes. This pre-election litigation also clarified that HAVA does not require states to count provisional votes cast in the wrong precinct. Otherwise, however, this pre-litigation occurred too late to shape significantly the way the states implemented provisional voting.

Lawsuits filed shortly after Election Day, which were designed to alter the outcome of a close election, were uniformly unsuccessful in this goal, although some of them had the ancillary effect of requiring the counting of some provisional ballots that would have been left uncounted. Thus, the experience of the 2004 election shows that litigation can be useful, not to change the outcome of a race, but to enhance the accuracy of the provisional voting process. This kind of accuracy-enhancing litigation is most beneficial the earlier it occurs in the process. The nation can anticipate more litigation before the 2006 and 2008 elections if states leave unaddressed some of the ambiguities and problems that surfaced in the 2004 election.

Although the enactment of HAVA in 2002 and its erratic implementation in the states during the ensuing two years provided ample opportunity for litigation designed to clarify its requirements concerning provisional voting, or otherwise challenge state laws and administrative procedures regarding provisional voting, such litigation did not develop until the eve of the November 2004 general election. By then, it was largely too late for litigation to affect the rules and procedures in place in advance of Election Day.

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

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

To a lesser extent there was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining whether these provisional voters already have voted an absentee ballot (in which case one would need to be ruled ineligible, in order to avoid double voting). But these decisions confirm the basic premise that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

After Election Day, there was litigation over provisional ballots in states where the outcome of specific races might turn on whether or not some of the provisional ballots cast were ruled eligible for counting. Moreover, the "placeholder" filing of similar lawsuits in Ohio – in anticipation that provisional ballots might have made a difference in the presidential election in that state – indicates that there would have been more litigation of this type had that race (or others) been closer. Although these placeholder lawsuits fizzled away once it was clear that provisional ballots in Ohio would not affect the result of the presidential election, the litigable issues remain capable of resurrection when they might make a difference in the future. Indeed, the League of Women Voters has already filed a major new lawsuit in Ohio, seeking proactive changes in the provisional voting system in advance of the next election in that state. (This effort to resolve these legal issues well before November 2006 is a salutary one, so that the judiciary does not struggle with complicated, sensitive questions at a frenzied pace, either in the last few weeks before Election Day or the first few weeks immediately after Election Day.)

The efficacy of these post-Election Day lawsuits was mixed. In New York, supporters of a Democratic candidate for a state senate seat prevailed in that state's highest court on the proposition that provisional ballots cast at the correct polling *site* but at the wrong precinct should be counted. (Many polling sites, particularly in urban locations, serve multiple precincts.) The New York high court, however, rejected the contention that provisional ballots at the wrong polling site must be counted. The court also rejected the proposition that a provisional ballot should count if another (regular) vote already had been cast in the name of the provisional voter (even if the provisional voter purported to offer proof that the other vote had been cast by an imposter). Finally, the court accepted the contention that a provisional ballot should count if the ballot's envelope was missing information as a result of a poll worker's clerical error. The upshot of these rulings was that the Democratic candidate reduced the Republican's margin of victory (from 58 to a mere 18 votes), but did not succeed in overturning the election result.

In North Carolina, post-election litigation over provisional ballots ultimately proved inconsequential as the state's legislature took matters into its own hands. The race for the state's Superintendent of Public Instruction turned on whether approximately 11,000 "wrong precinct" provisional ballots would be counted under state law. The state's Supreme Court ruled that they should not count, but the state's legislature disagreed and enacted a new law to supersede the supreme court's ruling. The election was finally resolved on August 23, 2005 – *43 weeks* after Election Day – making it the last settled statewide election from 2004. The length of time it took to resolve this dispute shows the dangers of leaving ambiguous provisions of state law concerning the counting of provisional ballots.

Washington suffered an even more celebrated, if slightly less protracted, dispute over the counting of provisional ballots in statewide race. Here, too, the effort to overturn the result of the race through a lawsuit was unsuccessful. Republicans went to court after their gubernatorial candidate, Dino Rossi, came up 129 votes short in the third (manual) count of the ballots (having come out ahead in the two previous – machine – counts). Among other problems, Republicans were able to show that this third count included 252 provisional ballots cast by individuals who could not be verified as registered voters. But because these provisional ballots had been mingled with regular ballots during the counting process, it no longer could be determined for which candidate these provisional ballots were cast. After a lengthy trial at which the Republicans attempted to show statistically that enough of these ineligible ballots would have been cast for the Democratic candidate to change the result of the election, the trial court rejected such statistical proof as improper under state law, and Rossi decided not to appeal the decision to state's supreme court. The ruling came on June 6, 2005 – 32 weeks after Election Day.

Perhaps Washington's plight was aberrational and uncontrollable: how were election officials supposed to predict – and, more important, how were they supposed to avoid – the problem of poll workers inappropriately feeding provisional ballots through the counting machines as if they were regular ballots? (For future elections, Washington has adopted a series of measure, including color-coding provisional ballots and making sure that their different shape and size prevents them from being read by the machines used to count regular ballots, in an effort to prevent a repeat of this particular problem.) The after-the-fact litigation certainly was unable to put the spilled milk back in the bottle. While the litigation put a spotlight on the failures of the electoral process in Washington in 2004, serving as a catalyst for future reforms, it did nothing to change the outcome of the 2004 election itself, except only to delay the conclusion of the process by more than six months. (The fact that the Democratic candidate, Christine Gregoire, who was certified the winner after the manual recount, was inaugurated as Governor and exercised the powers of the office during those six months evidently affected the willingness of a trial judge to overturn the results of the election.)

One earlier aspect of the litigation over provisional ballots in Washington did prove efficacious – and importantly so. In December 2004, during the recounting process (before certification of Gregoire as winner), it was discovered that 547 provisional ballots in King County had been rejected because they could not be matched with a signature in the county's current electronic database of registered voters, but that county officials had not attempted to match the signatures against original registration forms, older electronic files, or other available records. Upon this discovery, Democrats went to court arguing that state law required that the provisional ballots be verified against these additional records. The Washington Supreme Court unanimously agreed with this argument, vindicating the principle that provisional ballots are designed to protect voters against clerical errors affecting the accuracy of the state's updated registration list.

The state supreme court, however, rejected the Democrats' additional argument that different rates at which counties invalidated provisional ballots because the signature on the ballot did not match the signature on file was sufficient to establish an Equal Protection violation under the principles of *Bush v. Gore*. The different rates could be explained by factors other than the assumption that county officials were applying different standards when conducting signature matches. Since the counties were purporting to apply the same standard, and there was no definitive proof to the contrary, the court found no Equal Protection violation.

The Democrats did win another important procedural ruling early on in the post-election litigation in Washington. They sought – and obtained – public disclosure of the names of all individuals whose provisional ballots were rejected because their signatures did not match county records. This disclosure ultimately uncovered which provisional ballots had been rejected based on insufficient examination of county records.

CONCLUSIONS:

A review of all the litigation over provisional voting in connection with the 2004 election leads to the following tentative conclusions. First and foremost, litigation is more likely to be successful – and yield a public benefit – if its goal is simply to assure the accuracy of the provisional voting process, rather than seeking to undo the result of an election. Of course, as a practical reality, most litigation that actually occurs is likely to be motivated by a desire to affect the outcome of an election, rather than the altruistic, public-spirited motive of improving the accuracy of the process. For this reason, in the future, it will be useful for states to distinguish between (a) streamlined administrative remedial processes, which will enable individual voters to seek redress in the event they believe their provisional ballot rights were mistreated, and (b) a more burdensome judicial proceeding for the purpose of contesting an election result. In the meantime, in some states that have been the focus of widespread national attention because of past problems (for example, Florida and Ohio), citizen groups like the League of Women Voters may have sufficient resources and incentives to bring system-wide litigation that seeks structural reform of the provisional voting process.

Second, and related, the earlier that litigation occurs in the electoral process, the more likely it is to secure rights protected under provisional voting laws. If nothing else, early litigation (even when ruled unmeritorious) has the effect of clarifying the rules in advance. It can put people on notice of what rights they do and do not have. The EAC might be in a position to give guidance to states on how to encourage earlier, rather than later, litigation over provisional ballots. For example, EAC could consider whether it would be a "preferred practice" for states to preclude any post-election challenges that could have been filed in a pre-election lawsuit.

Third, the more narrow and specific the complaint (and thus the more narrow and specific the remedy sought by a lawsuit), the more receptive the court will be. It is easier for a court to order disclosure and the checking of additional records than it is for a court to sustain an amorphous Equal Protection claim about disparities in the signature verification process. Although it is too early to say that all Equal Protection challenges to the counting of provisional ballots will be unsuccessful, the speed with which the Washington Supreme Court rejected the Equal Protection claim over the signature matching process indicates that future Equal Protections claims will need to be much more specific about the disparities they allege in order to have a chance of success.

In sum, if litigation is to occur over provisional voting in 2006 or 2008, it would be better if the litigation were to occur as early as possible before Election Day, focused specifically on the ways state laws are allegedly deficient and should be remedied. Such litigation can have the virtue of clarifying the rules applicable to provisional voting and, where necessary, assuring that the rights protected by provisional voting laws are indeed enforced. Such pre-election lawsuits, of course, do not ask the court to change which candidate wins the election, and one lesson of the 2004 experience is that litigation is least valuable when it seeks that kind of outcome-altering decree.

Question 4: How effective was provisional voting in enfranchising qualified voters?

Answering this question poses a considerable challenge. To evaluate the decisions of local election officials' decisions on how to inform voters about the possibility of provisional voting and then whether to count a provisional ballot demands information about the eligibility or registration status of each provisional voter. That information is not available.

What is known, with reasonable confidence, is the number of provisional ballots cast and provisional ballots counted. Nationwide, 1,933,863 provisional ballots were cast, 1.6% of the total turnout. Of those ballots, 63.7% were subsequently verified and included in the final vote tally. Provisional ballots enfranchised 1,231,429 citizens, or 1.01% of the total turnout in 2004. These ballots were cast by voters who otherwise would have been turned away at the polls.

Not knowing the total number of registered voters who might have voted but could not makes estimating the effectiveness of provisional voting quantitatively impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes are lost in presidential elections due to the causes shown in the table below. The estimate is a rough approximation, but it may provide data good enough for at least a rough assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

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

Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting. Thus a rough-and-ready estimate of the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A very rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

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* Another interpretation of the data should be considered as well. The category of "registration mix-ups" was developed as a measure of the states' registration systems as included in the Census Bureau's Current Population Survey. The CPS after each election asks people if they were registered and if they voted. It gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000. Thus the arrival of provisional voting in the 18 "News" increased the number voting by only 0.1%.

Several states came to just that conclusion. Legislative activity is evidence that states were less than satisfied with the effectiveness of their processes. State legislation adopted since the election points to areas of concern.

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

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

Another indication of lack of effectiveness is legal challenges to the process. Voters or other parties have sought court review of local officials' decisions, and those are described in the answer to Question 3.

Aggregate data from the states indicates that some states were more effective than others in enfranchising voters through the provisional ballot. In states that used a provisional ballot before HAVA ("old" states), a higher proportion of voters were enfranchised by provisional ballots than in "new" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

A reasonable assumption is that potential voters in both the old states and new states encountered similar problems that made it impossible to cast a regular ballot. But they had different provisional systems to navigate, and consequently they experienced different outcomes. Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the new states. This provides more evidence that there is room for improvement.

If experience with provisional voting does turn out to be the key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further guidance from the EAC on best practices and more consistent management could sharpen the lessons learned from that experience.

But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic. The other possibility is that the "new" states have a political culture different from the "old" states. That is, underlying characteristics of the "new" states political system may be the reason they had not adopted some form of provisional voting as the "old" states did.

The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, re-registering after changing address. Or they may value keeping control at the local level, rather than ceding some authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballot will he harder and take longer to achieve.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

HAVA gave states broad latitude in how to implement provisional voting, including who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Little consistency existed among and within states in the way provisional ballots were used in 2004.

The use of provisional ballots was not distributed evenly across the country. Indeed, 6 states (California, New York, Ohio, Arizona, Washington, and North Carolina) accounted for more than two-thirds of all the provisional ballots cast in the 2004 election. Wide variation was found across the nation, even when overall state size and turnout was taken into account.

- In Alaska, provisional votes accounted for 7% of all votes cast on Election Day. In 22 other states provisional ballots made up less than 0.5% of votes on Election Day.
- The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware.
- The range of ultimate inclusion of provisional ballots in final vote tallies was immense: The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.

The greatest source of this variation was the state's experience or lack of experience with provisional voting. In experienced states, a higher proportion of voters cast provisional ballots and a higher percentage of provisional ballots was counted than in "new" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

- The 25 experienced states averaged about 2% (2.17%) of the total vote cast as provisional ballots. This was 4 times the rate as in states new to provisional, which averaged less than half a percent (0.47%).
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion of the new states, which counted just 33%, of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states provisional ballots accounted for only 0.23% of the total vote.
- In short, the share of provisional ballots in the total vote was six times greater in experienced states than in new states.

Other influences on the variation among the states included:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted.
- In the 4 states that simply matched signatures nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.

  - In the 14 States that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were certified
  - In the 14 states that required an affidavit just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted.
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were certified. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.

- Voter registration databases provided information that reduced the number of provisional ballots counted. In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%).

- States that allowed out-of-precinct ballots counted 56% of the provisional ballots. States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

  - In experienced states, this was even more pronounced. 52% of ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

High-Low rating of Percent of PV Ballots Cast as part of Turnout

Count

		High-Low rating of Percent of PV Ballots Cast that were Counted		
		Less than 50% Counted	More than 50% Counted	Total
High-Low rating of Percent of PV Ballots Cast as part of Turnout	Less than 1% of Total Turnout was PV	21	5	26
	More than 1% of Total Turnout was PV	1	16	17[*]
Total		22	21	43

As the table above shows, the nation can be divided into two groups of states: those that made significant use of provisional ballots (more than 1% of total turnout was cast as provisional ballots) and those that did not. The difference in how these two groups evaluated those ballots

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[*] These states are: Alaska, Arizona, California, Colorado, District of Columbia, Iowa, Kansas, New York, Washington, Utah, Ohio, North Carolina, Nebraska, Maryland, New Mexico, New Jersey, and West Virginia.

that were cast was striking. In states where high levels of provisional ballots were cast, high levels were also counted. In states where low levels of provisional ballots were cast, low levels were typically counted.

The table shows the relationship between use of provisional ballots in the states and the determination by the state that a provisional ballot should be counted. The relationship is strong (Yule's Q = 0.97), clear, and significant. In 26 states less than 1% of voters cast a provisional ballot. In 21 of those states, less than half the ballots cast were counted. In 17 states, more than 1% of voters case a provisional ballot, and in 16 of those states more than half the ballots were counted.

No ready conclusions can be drawn about why these results occur. The data could suggest that states where high levels of ballots were cast were overwhelmed by the sheer volume of them, resulting in insufficient critique of each ballot, or conversely that they were simply more experienced in making evaluations and were better able to identify legitimate ballots. It is possible that states with few ballots cast did not invest the time and effort to properly evaluate them, because their were so few of them, or it is possible that they were better able to dedicate the time to such an investigation and properly weeded out invalid ballots. Further research is required to better ascertain the reasons for these disparities.

Variation within states

Even within states consistency was hard to find. Counties differed widely in the rate at which ballots were cast and counted, suggesting that other factors beyond statewide regulations or administrative requirements were at play. This was true in both new and old states.

Election Line, for example, found that:

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

Of the 20 States for which we have gathered county-level provisional ballot data, the rate of counting these ballots frequently varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.

Election Official's Perceptions

In addition to the statistical differences among states' handling of provisional voting, there were also differences in how election officials prepared for and evaluated the use of provisional ballots. The survey conducted by the Eagleton Institute at Rutgers University found that county election officials reported different perceptions of provisional balloting, depending upon whether they came from "old" or "new" States. Both groups reported gaining help from state election offices on how to implement provisional balloting, but in different ways.

- Officials from "new" states reported receiving more guidance on how to evaluate ballots once cast, while officials from "old" states reported receiving more guidance on how to design ballots. Both groups regarded the guidance they received as being helpful.
- Officials from "old" states were more likely to report that they counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.
- Officials from "new" states were more likely to report that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted and that more time was needed to implement provisional voting procedures.
- Officials from "old" states were more likely to report that provisional voting sped up and improved polling place operations and that it helped officials to maintain more accurate registration databases.
- Officials from "new" states were more likely to agree that provisional voting created unnecessary problems for election officials and poll workers.

This data can be interpreted either of two ways. First, experience and familiarity with provisional voting may be the key factor in the degree to which provisional voting is used and in how election officials perceived provisional balloting. Those officials who were more familiar and experienced with the system had more positive reactions to provisional voting and its worth. Eight out of ten officials from experienced states reported that "there is a need to offer voters the opportunity to cast provisional ballots", while only 6 out of 10 from new states did so.

But another way of explaining the difference is less rosy for provisional ballots. It may be that the states new to provisional balloting have a political culture somewhat different from the states that had offered a provisional ballot before HAVA. The new states may have a history of striking a different balance among the competing voting objectives of access, security, and administrative practicality. Officials in those states may believe that the fail safe offered by provisional voting broadens access at the expense of security and burdens election administrators beyond any perceived benefit. Further survey research could help resolve this question.

Conclusion

States that previously had some form of provisional ballots and those that did not had different experiences in 2004. Those states that had used a provisional ballot before HAVA had more ballots cast, found higher levels of those ballots to be legitimate, and had much higher levels of provisional ballots in their final vote tallies. Election officials in those states also felt that provisional ballots were easier to administer and more worthwhile than did their counterparts in states new to provisional voting. The strongest influence noted in this study was simply that of experience with the process.

If the difference is mostly one of experience, in subsequent elections, officials will be more prepared for and comfortable with the implementation of provisional ballots. This should lead to greater consistency among the states and more positive ratings of it as a system. If, on the other hand, the different experiences with provisional ballots reflect different political cultures among the states, consistency among the states will prove more difficult to achieve.

Other factors, such as verification laws and requirements for whether out-of-precinct ballots may be counted, will continue to cause variance across the country. But as voters and election officials become more familiar with the system, that variance may stabilize. In sum, provisional balloting was applied inconsistently in 2004, returning a wide range of results. Since the states have considerable latitude in how they meet HAVA's requirements for provisional voting, a considerable degree of variation among the states is to be expected in the future. If that variation stems from differences in political culture among the states, it is likely to persist.

Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

This question demands two different kinds of answers. First, how do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process? Second, objectively how well did the process appear to be managed?

While essentially all (98%) county-level local elections officials considered the instructions they received from their state governments to be "useful" or "very useful," the crucial question is how well did the process work on Election Day? The lack of consistency among and within states in the use of provisional ballots and evaluating those ballots indicates considerable variation in the understanding of the process by election officials.

Four out of ten local election officials felt poll workers needed more training to understand their responsibilities. One sign of dissatisfaction with the functioning of the provisional voting process is the number of states that have amended their statutes on provisional voting to include specific language about poll worker training. Among these states are Colorado, Indiana, New Mexico and Washington.

Statutes, of course, reflect only part of the story. For example, Alabama – a state new to provisional voting – undertook a concerted training effort on how to handle and count provisional ballots. It also created a notification system whereby voters could verify if their vote counted within 10 days of casting their ballots. These steps were not dictated by statute, but reflected the initiative of f local elections officials. Their leadership indicates a good understanding of their responsibilities under HAVA and the state statute.

More than 8 out of 10 county-level elections officials reported receiving instructions from their state government regarding the implementation of provisional voting. Topics covered in those instructions from the states included:

- How to administer the provisional voting system
- Who is eligible to vote using a provisional ballot
- How individuals vote using a provisional ballot
- The jurisdiction where individuals can vote by provisional ballot
- Whether the provisional ballot could be used as an application to update the voter's registration
- How to train poll workers to process provisional ballots
- How to provide voters with the opportunity to verify if their provisional ballot was counted
- Guidelines for determining which provisional ballots are to be counted
- Strategies to reduce the need for voters to use provisional ballots
- How to design the structure of the provisional ballot

Those local election officials believe the most effective efforts to improve the provisional voting process would be to reduce the use of provisional ballots as a failsafe by improving technology –

such as registration databases – available to voters and poll workers. Reflecting their understanding of the provisional voting process, local elections officials call for:

- State-sponsored websites where voters can verify their registration status before Election Day.
- Access by poll-workers to statewide voter registration databases at polling place.

While local election officials report that the instructions they received were "useful," the quality of the information they receive is not the only influence on their performance. They recognize that timing is critically important. They understand that they must receive clear instructions from their state election agencies early enough to absorb, understand, and pass it along as operational instructions to poll workers and voters.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:41 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: New Peer Review Group Member

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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:39 AM -----

"Tom O'neill"
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09/02/2005 04:48 PM

To tokaji.1@osu.edu, ireed@rutgers.edu, john.weingart@rutgers.edu, foley.33@osu.edu, rmandel@rci.rutgers.edu, rmandel@rci.rutgers.edu
cc klynndyson@eac.gov
Subject New Peer Review Group Member

Tim O'Rourke, Dean of the Fulton School of Liberal Arts at Salisbury University in Maryland, has agreed to serve on the Peer Review Committee.

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:40 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
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Subject Fw: EAC Briefing Materials - Tues. 9/6

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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:34 AM -----

"Lauren Vincelli"
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To klynndyson@eac.gov
cc "'Tom O'neill'" [redacted]
Subject EAC Briefing Materials - Tues. 9/6

Hi Karen,

Attached please find a summary of answers to the questions guiding our Provisional Voting analysis in preparation for our meeting with the EAC on Tuesday, Sept. 9th. Please distribute this document in advance of the briefing to your colleagues who will be attending. There are several appendix documents that have been fedex'ed to you for delivery by tomorrow at noon. These documents form a large part of our original research, and are referred to in our summary responses to the 6 guiding questions. I am sending 3 copies of the appendix documents for you and your colleagues. Additionally, Mr. O'Neill will be bringing you a CD-rom with all of the enclosure documents for your convenience.

If you have any questions, please do not hesitate to call or email me. Enjoy the holiday weekend.

Best,
Lauren Vincelli

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EAGLETON INSTITUTE OF POLITICS

BREIFING FOR THE EAC

PRELIMINARY FINDINGS ON PROVISIONAL VOTING

September 1, 2005

Prepared by:
Eagleton Institute of Politics at Rutgers, The State University of New Jersey
Moritz College of Law at the Ohio State University

MEMORANDUM

TO: Commissioners and Staff of the EAC

FROM: Tom O'Neill, Eagleton Institute of Politics

DATE: September 6, 2005

RE: Briefing on Provisional Voting Research

The enclosed draft synthesizes our findings to date based on the research on provisional voting completed since the start of the project. It is organized as summary answers to the six key questions on topics of particular interest enumerated in the contract.

1) How did states prepare for the HAVA Provisional Voting requirement?
2) How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
3) How did litigation affect the implementation of Provisional Voting?
4) How effective was Provisional Voting in enfranchising qualified voters?
5) Did states and local processes provide for consistent counting of Provisional Ballots?
6) Did local election officials have a clear understanding of how to implement Provisional Voting?

Our discussion on the 6th will revolve around these draft, summary answers. Your comments and reactions to the material will provide direction a basis for us to complete work on the final report and the preliminary guidance document. We seek the EAC's response and comments to ensure that the research is meeting the needs of Commissioners and staff.

We will also ask for the comments of the Peer Review Group on this draft to provide independent analysis of our approach and methods.

The following materials are enclosed as background for the presentation:

Summary responses to 6 Key Questions regarding Provisional Voting

Appendices:
a) Statistical Review of Provisional Voting in the 2004 Election
b) State Narratives on Provisional Voting
c) Memorandum: Provisional Voting Litigation by Issue
d) Memorandum: Provisional Voting Litigation by State
e) Memorandum: Provisional Voting Litigation

Question 1: How did states prepare for HAVA provisional voting requirements?

HAVA required all states to develop a process for permitting individuals who state they are registered, eligible to vote and in the proper jurisdiction for voting but are not on the official registration list to do so by provisional ballot. It also directed states to provide a way for provisional voters to find out if their ballots were counted.

For the 25 states that had some form of provisional ballots before HAVA, meeting the requirements meant reviewing and revising, if necessary, their process for provisional voting. The 18 states that were new to provisional voting had to provide for provisional ballots by a new statute or administrative regulation and had to design procedures for pre-election, election day and post-election day activity. Preparation at the state level is described exhaustively in the collection of state statutes and regulations compiled in this research.

In addition to devising the provisional voting process, states had the responsibility to define "jurisdiction," adopt rules regarding the use of voter identification, and prepare a system to decide which provisional ballots cast should be counted. The states also had the responsibility of providing training or instruction for local election officials who would actually manage the provisional voting process and the local and intermediary level of government. Interviews with local election officials, at the county level in most states, provided information to assess how they prepared to administer the process.

Most, but not all, (84 percent) county-level election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states:

- Almost all officials received instruction from their state government on how to determine a voter's eligibility to receive a provisional ballot and felt the instructions provided were useful.
- Nine out of ten received instruction for providing voters the opportunity to verify if the provisional ballot was counted as well as instruction for establishing guidelines for counting provisional ballots.
- Two out of three received information on using a provisional ballot as an application to update the voter's registration.
- Only about half of local election officials received instruction on strategies to reduce the need for voters to use provisional ballots.

Although almost all county-level election officials provided training or written instruction to precinct-level poll workers on how to administer provisional ballots, wide disparities existed in other areas of instructions or resources.

- Nine out of ten provided a telephone line for poll workers to speak to an election official with access to a list of eligible voters to determine voters' assigned precinct and polling place.
- Eight in ten furnished local poll workers with access to a list of eligible voters in the

jurisdiction.

- Only about 1 in 10 (12 percent) made available to poll workers a statewide voter registration database.
- Almost equally rare (14%) was training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in how the county-level officials prepared to comply with HAVA's requirement of providing that voters have a way to find out if their provisional ballots counted:

- Seven in ten of those officials provided the main telephone number for the local or county election office;
- About half (47 percent) used mail notification;
- Four in ten provided a dedicated toll-free telephone hotline;
- About 1 in 5 (22%) offered this information through a website, and about half that number offered email notification.

Question 2: How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?

In the 2004 election, 18 states were new to the process of provisional voting, while 25 others had experience with similar methods of "fail-safe voting." Local election officials in the "Old" states felt more confident in their ability to administer the provisional voting process:

- Almost three-quarters (74%) of local election officials in the "Old" states found implementing the provisional voting system was "easy," but that was true of just over half (56%) of officials in the "New" states.
- About half (49%) of officials in the "New" states felt that more training was needed on how to administer the provisional voting system. Less than 40% of officials in the "Old" states felt that way.
- Nine out of ten local officials in the "Old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "New" states.

In some functions there was little difference in the preparation for provisional voting by "Old" and "New" states. For example, in both subgroups, about half (54%) of county-level officials received from their state governments little information about "strategies to reduce the need for voters to use provisional ballots." But for other functions, training varied widely in the type and amount between the two types of states:

- More officials in "Old" states (7 in 10) than "New" (6 in 10) received state instruction on the design of the provisional ballot.
- By a similar margin, more "Old" state officials received instruction about using the provisional ballot as an application to update the voter's registration.

The "New" state officials believed that voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted, and they felt that more funding was needed to educate voters about their rights to cast a provisional ballot:

- Four out of ten officials in the "New" states, compared with 3 out of 10 in the "Old" stated that more information should have been provided to voters about the jurisdiction in which the ballot had to be cast.
- Also, four out of ten in the "New" states felt that more time was needed compared with just over a quarter (26%) of those in "Old" states.

When we move from preparation to performance, the importance of experience becomes sharply clear. In the "Old" states, provisional ballots represented over 2% (2.11%) of the total vote. In the "New" states, that number was less than one-fourth of that, 0.47%. How the ballots were then evaluated also showed significant differences between "Old" and "New." In ruling ballots legitimate and including them in the final vote, the "Old" states averaged nearly double the number of the "New" states, 58% to 32%. In "Old" states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the "New" states.

Question 3: How did litigation affect the implementation of Provisional Voting?

> SUMMARY: Litigation just before the 2004 election upheld the principle that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes. This pre-election litigation also clarified that HAVA does not require states to count provisional votes cast in the wrong precinct. Otherwise, however, this pre-litigation occurred too late to significantly shape the way the states implemented provisional voting.
>
> Lawsuits filed shortly after Election Day, which were designed to alter the outcome of a close election, were uniformly unsuccessful in this goal, although some of them had the ancillary effect of requiring the counting of some provisional ballots that would have been left uncounted. Thus, the experience of the 2004 election shows that litigation can be useful, not to change the outcome of a race, but to enhance the accuracy of the provisional voting process. This kind of accuracy-enhancing litigation is most beneficial the earlier it occurs in the process, and the nation can anticipate more of it in advance of the 2006 and 2008 elections if states leave unaddressed some of the ambiguities and problems that surfaced in the 2004 election.

Although the enactment of HAVA in 2002 and its erratic implementation in the states during the ensuing two years provided ample opportunity for litigation designed to clarify its requirements concerning provisional voting, or otherwise challenge state laws and administrative procedures regarding provisional voting, such litigation did not develop until the eve of the November 2004 general election. By then, it was largely too late for litigation to affect the rules and procedures in place in advance of Election Day.

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

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

To a lesser extent there was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining whether these provisional voters already have voted an absentee ballot (in which case one would need to be ruled ineligible, in order to avoid double voting). But these decisions confirm the basic premise that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

After Election Day, there was litigation over provisional ballots in states where the outcome of specific races might turn on whether or not some of the provisional ballots cast were ruled eligible for counting. Moreover, the "placeholder" filing of similar lawsuits in Ohio – in anticipation that provisional ballots might have made a difference in the presidential election in that state – indicates that there would have been more litigation of this type had that race (or others) been closer. Although these placeholder lawsuits fizzled away once it was clear that provisional ballots in Ohio would not affect the result of the presidential election, the litigable issues remain capable of resurrection when they might make a difference in the future. Indeed, the League of Women Voters has already filed a major new lawsuit in Ohio, seeking proactive changes in the provisional voting system in advance of the next election in that state. (This effort to resolve these legal issues well before November 2006 is a salutary one, so that the judiciary does not struggle with complicated, sensitive questions at a frenzied pace, either in the last few weeks before Election Day or the first few weeks immediately after Election Day.)

The efficacy of these post-Election Day lawsuits was mixed. In New York, supporters of a Democratic candidate for a state senate seat prevailed in that state's highest court on the proposition that provisional ballots cast at the correct polling *site* but at the wrong precinct should be counted. (Many polling sites, particularly in urban locations, serve multiple precincts.) The New York high court, however, rejected the contention that provisional ballots at the wrong polling site must be counted. The court also rejected the proposition that a provisional ballot should count if another (regular) vote already had been cast in the name of the provisional voter (even if the provisional voter purported to offer proof that the other vote had been cast by an imposter). Finally, the court accepted the contention that a provisional ballot should count if the ballot's envelope was missing information as a result of a poll worker's clerical error. The upshot of these rulings was that the Democratic candidate reduced the Republican's margin of victory (from 58 to a mere 18 votes), but did not succeed in overturning the election result.

In North Carolina, post-election litigation over provisional ballots ultimately proved inconsequential as the state's legislature took matters into its own hands. The race for the state's Superintendent of Public Instruction turned on whether approximately 11,000 "wrong precinct" provisional ballots would be counted under state law. The state's Supreme Court ruled that they should not count, but the state's legislature disagreed and enacted a new law to supersede the supreme court's ruling. The election was finally resolved on August 23, 2005 – *43 weeks* after Election Day – making it the last settled statewide election from 2004. The length of time it took to resolve this dispute shows the dangers of leaving ambiguous provisions of state law concerning the counting of provisional ballots.

Washington suffered an even more celebrated, if slightly less protracted, dispute over the counting of provisional ballots in statewide race. Here, too, the effort to overturn the result of the race through a lawsuit was unsuccessful. Republicans went to court after their gubernatorial candidate, Dino Rossi, came up 129 votes short in the third (manual) count of the ballots (having come out ahead in the two previous – machine – counts). Among other problems, Republicans were able to show that this third count included 252 provisional ballots cast by individuals who could not be verified as registered voters. But because these provisional ballots had been mingled with regular ballots during the counting process, it no longer could be determined for which candidate these provisional ballots were cast. After a lengthy trial at which the Republicans attempted to show statistically that enough of these ineligible ballots would have been cast for the Democratic candidate to change the result of the election, the trial court rejected such statistical proof as improper under state law, and Rossi decided not to appeal the decision to state's supreme court. The ruling came on June 6, 2005 – 32 weeks after Election Day.

Perhaps Washington's plight was aberrational and uncontrollable: how were election officials supposed to predict – and, more important, how were they supposed to avoid – the problem of poll workers inappropriately feeding provisional ballots through the counting machines as if they were regular ballots? (For future elections, Washington has adopted a series of measure, including color-coding provisional ballots and making sure that their different shape and size prevents them from being read by the machines used to count regular ballots, in an effort to prevent a repeat of this particular problem.) The after-the-fact litigation certainly was unable to put the spilled milk back in the bottle. While the litigation put a spotlight on the failures of the electoral process in Washington in 2004, serving as a catalyst for future reforms, it did nothing to change the outcome of the 2004 election itself, except only to delay the conclusion of the process by more than six months. (The fact that the Democratic candidate, Christine Gregoire, who was certified the winner after the manual recount, was inaugurated as Governor and exercised the powers of the office during those six months evidently affected the willingness of a trial judge to overturn the results of the election.)

One earlier aspect of the litigation over provisional ballots in Washington did prove efficacious – and importantly so. In December 2004, during the recounting process (before certification of Gregoire as winner), it was discovered that 547 provisional ballots in King County has been rejected because they could not be matched with a signature in the county's current electronic database of registered voters, but that county officials had not attempted to match the signatures against original registration forms, older electronic files, or other available records. Upon this discovery, Democrats went to court arguing that state law required that the provisional ballots be verified against these additional records. The Washington Supreme Court unanimously agreed with this argument, vindicating the principle that provisional ballots are designed to protect voters against clerical errors affecting the accuracy of the state's updated registration list.

The state supreme court, however, rejected the Democrats' additional argument that different rates at which counties invalidated provisional ballots because the signature on the ballot did not match the signature on file was sufficient to establish an Equal Protection violation under the principles of *Bush v. Gore*. The different rates could be explained by factors other than the assumption that county officials were applying different standards when conducting signature matches. Since the counties were purporting to apply the same standard, and there was no definitive proof to the contrary, the court found no Equal Protection violation.

The Democrats did win another important procedural ruling early on in the post-election litigation in Washington. They sought – and obtained – public disclosure of the names of all individuals whose provisional ballots were rejected because their signatures did not match county records. This disclosure ultimately uncovered which provisional ballots had been rejected based on insufficient examination of county records.

CONCLUSIONS:

A review of all the litigation over provisional voting in connection with the 2004 election leads to the following tentative conclusions. First and foremost, litigation is more likely to be successful – and yield a public benefit – if its goal is simply to assure the accuracy of the provisional voting process, rather than seeking to undo the result of an election. Of course, as a practical reality, most litigation that actually occurs is likely to be motivated by a desire to affect the outcome of an election, rather than the altruistic, public-spirited motive of improving the accuracy of the process. For this reason, in the future, it will be useful for states to distinguish between (a) streamlined administrative remedial processes, which will enable individual voters to seek redress in the event they believe their provisional ballot rights were mistreated, and (b) a more burdensome judicial proceeding for the purpose of contesting an election result. In the meantime, in some states that have been the focus of widespread national attention because of past problems (for example, Florida and Ohio), citizen groups like the League of Women Voters may have sufficient resources and incentives to bring system-wide litigation that seeks structural reform of the provisional voting process.

Second, and related, the earlier that litigation occurs in the electoral process, the more likely it is to secure rights protected under provisional voting laws. If nothing else, early litigation (even when ruled unmeritorious) has the effect of clarifying the rules in advance. It can put people on notice of what rights they do and do not have. The EAC might be in a position to give guidance to states on how to encourage earlier, rather than later, litigation over provisional ballots. For example, EAC could consider whether it would be a "preferred practice" for states to preclude any post-election challenges that could have been filed in a pre-election lawsuit. [Tom: I'm not sure whether to include these last two sentences, but they are responsive to your question.]

Third, the more narrow and specific the complaint (and thus the more narrow and specific the remedy sought by a lawsuit), the more receptive the court will be. It is easier for a court to order disclosure and the checking of additional records than it is for a court to sustain an amorphous Equal Protection claim about disparities in the signature verification process. Although it is too early to say that all Equal Protection challenges to the counting of provisional ballots will be unsuccessful, the speed with which the Washington Supreme Court rejected the Equal Protection claim over the signature matching process indicates that future Equal Protections claims will need to be much more specific about the disparities they allege in order to have a chance of success.

In sum, if litigation is to occur over provisional voting in 2006 or 2008, it would be better if the litigation were to occur as early as possible before Election Day, focused specifically on the ways state laws are allegedly deficient and should be remedied. Such litigation can have the virtue of clarifying the rules applicable to provisional voting and, where necessary, assuring that the rights protected by provisional voting laws are indeed enforced. Such pre-election lawsuits, of course, do not ask the court to change which candidate wins the election, and one lesson of the 2004 experience is that litigation is least valuable when it seeks that kind of outcome-altering decree.

Question 4: How effective was provisional voting in enfranchising qualified voters?

Providing an answer to this question poses a considerable challenge. To evaluate the decisions of local election officials' decisions on how to inform voters about the possibility of provisional voting and then whether to count a provisional ballot demands information about the eligibility or registration status of each provisional voter. That information is not available.

What is known, with reasonable confidence, is the number of provisional ballots cast and provisional ballots counted. Provisional ballots enfranchised 1,231,429 citizens, or 1.01% of the total turnout in 2004. Nationwide, 1,933,863 provisional ballots were cast, 1.6% of the total turnout. Of those ballots, 63.7% were subsequently verified and included in the final vote tally. These ballots were cast by voters who otherwise would have been turned away at the polls.

Not knowing the total number of registered voters who might have voted but could not makes estimating the effectiveness of provisional voting quantitatively impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes are lost in presidential elections due to the causes shown in the table below. The estimate is a rough approximation, but may provide data that begins to assess the order of magnitude of the pool of potential voters who might have been helped by the provisional ballot process.

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

Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting. Thus a rough-and-ready estimate of the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A very rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)*. Whatever the precise figure, concluding that

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* Since this tentative conclusion is based on imprecise estimates, caution suggests another interpretation of the data be considered as well. The category of "registration mix-ups" was developed as a measure of the states' registration systems as included in the Census Bureau's Current Population Survey. The CPS after each asks people if they were registered and if they voted. It gives breakdowns of reasons why people did not vote.

Survey respondents tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states.

In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000. Thus the arrival of provisional voting in the 18 "News" increased the number voting by only 0.1%. We prefer the conclusion in the text, but this alternate interpretation may well be correct.

there is considerable room for improvement seems reasonable.

Several states came to just that conclusion. Legislative activity suggests that the states were less than satisfied with the effectiveness of their processes. State legislation adopted since the election points to areas of concern.

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

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

Another indication of lack of effectiveness is legal challenges to the process. Voters or other parties have sought court review of local officials' decisions.

- In Washington State a long legal battle over the gubernatorial election resulted in calls for reform in the way provisional ballots are evaluated. But much of the furor was over provisional ballots that possibly should not have been counted rather than over ballots that were rejected in error.

- In North Carolina's much-disputed election for Superintendent of Public Instruction, the most contentious debate concerning provisional ballots hinged on the issue of ballots cast outside the correct precinct rather than the qualifications of the voter to cast the ballot.

In general, the courts have been clear that a voter's ballot should not be rejected when the invalidity was caused by a ministerial error by election officials. In New York, the court place upon election officials a duty to direct voters to the correct district once they are inside the correct polling place, but the voter has the obligation to arrive at the correct polling place.

The courts have also held that states cannot categorically deny provisional ballots to voters, a holding that broadens the concept of provisional voting beyond the fail-safe concept. Unfortunately, these decisions could operate to decrease the chance that a ballot will actually be counted. Even if a precinct worker determines that a potential voter is seeking to vote in the wrong precinct, the voter cannot be denied a provisional ballot and simply directed to the correct polling place. If the voter demands a provisional ballot, it must be provided, even if it will not be counted if cast in the wrong precinct. Clearer instructions to poll worker and voters could ameliorate the unintended consequences of these court decisions.

Ultimately, second-guessing the determinations of election officials on counting ballots is likely to be fruitless outside of a court hearing on particular ballots and specific decisions. Aggregate data from the states, however, indicates that some states were more effective than others in enfranchising voters through the provisional ballot.

In states that used a provisional ballot before HAVA ("Old" states), a higher proportion of voters were enfranchised by provisional ballots than in "New" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

A reasonable assumption is that potential voters in both the old states and new states encountered similar problems that made it impossible to cast a regular ballot. But they had different provisional systems to navigate, and consequently they experienced different outcomes. Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the new states. This provides more evidence that there is considerable room for improvement.

If experience with provisional voting does turn out to be the key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further guidance from the EAC on best practices and more consistent management could sharpen the lessons learned from that experience.

But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "New" states was the result of administrative problems stemming from inexperience will improvement be automatic. The other possibility is that the "New" states have a political culture different from the "Old" states. That is, underlying characteristics of the "New" states political system may be the reason they had not adopted some form of provisional voting as the "Old" states did.

The "New" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, re-registering after changing address. Or they may value keeping control at the local level, rather than ceding some authority to state or federal directives. If the inconsistent performance in the "New" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballot will he harder and take longer to achieve.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

HAVA was designed to provide registered voters who found themselves absent from the voters' list at polling places a way to exercise their right to vote. It requires that certain voters be given provisional ballots and that those ballots be counted if they are later determined eligible under state law. The act gave states broad latitude in how to implement provisional voting, including who beyond the required categories of voters should receive provisional ballots and how to determine if provisional ballots that are cast should be counted.

There was considerable variation in how provisional ballots were distributed and counted in the 2004 election. Little consistency existed among and within states in the way provisional ballots were used.

The use of provisional ballots was not distributed evenly across the country. Indeed, 6 states (California, New York, Ohio, Arizona, Washington, and North Carolina) accounted for more than two-thirds of all the provisional ballots cast in the 2004 election. Wide variation was found across the nation, even when overall state size and turnout was taken into account.

- In Alaska, provisional votes accounted for 7% of all votes cast on Election Day. In 22 other states provisional ballots made up less than 0.5% of votes on Election Day.
- The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware.
- The range of ultimate inclusion of provisional ballots in final vote tallies was immense: The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.

The greatest source of this variation was the state's experience or lack of experience with provisional voting. In experienced states, a higher proportion of voters cast provisional ballots and a higher percentage of provisional ballots were counted than in states implementing provisional voting for the first time.

In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

- The 25 experienced states averaged about 2% (2.17%) of the total vote cast as provisional ballots. This was 4 times the rate as in states new to provisional, which averaged less than half a percent (0.47%).
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion of the new states, which counted just 33%, of cast provisional ballots.

- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states provisional ballots accounted for only 0.23% of the total vote.
- In short, the share of provisional ballots in the total vote was six times greater in experienced states than in new states.

Other influences on the variation among the states included:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted.

  - In the 4 states that simply matched signatures nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 States that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were certified
  - In the 14 states that required an affidavit just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted.
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were certified. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.

- Voter registration databases provided information that reduced the number of provisional ballots counted. In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%).

- States that allowed out-of-precinct ballots counted 56% of the provisional ballots. States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

  - In experienced states, this was even more pronounced. 52% of ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

A final word about the variation among the states:

High-Low rating of Percent of PV Ballots Cast as part of Turnout
* High-Low rating of Percent of PV Ballots Cast that were Counted Cross-tabulation

Count

		High-Low rating of Percent of PV Ballots Cast that were Counted		
		Less than 50% Counted	More than 50% Counted	Total
High-Low rating of Percent of PV Ballots Cast as part of Turnout	Less than 1% of Total Turnout was PV	21	5	26
	More than 1% of Total Turnout was PV	1	16	17[*]
Total		22	21	43

As the table above shows, the nation can be divided into two groups of states: those that made significant use of provisional ballots (more than 1% of total turnout was cast as provisional ballots) and those that did not. The difference in how these two groups evaluated those ballots that were cast was striking. In states where high levels of provisional ballots were cast, high levels were also counted. In states where low levels of provisional ballots were cast, low levels were typically counted.

The table shows the relationship between use of provisional ballots in the states and the determination by the state that a provisional ballot should be counted. The relationship is strong (Yule's Q = 0.97), clear, and significant. In 26 states less than 1% of voters cast a provisional ballot. In 21 of those states, less than half the ballots cast were counted. In 17 states, more than 1% of voters case a provisional ballot, and in 16 of those states more than half the ballots were counted.

No ready conclusions can be drawn about why these results occur. The data could suggest that states where high levels of ballots were cast were overwhelmed by the sheer volume of them, resulting in insufficient critique of each ballot, or conversely that they were simply more experienced in making evaluations and were better able to identify legitimate ballots. It is possible that states with few ballots cast did not invest the time and effort to properly evaluate them, because their were so few of them, or it is possible that they were better able to dedicate the time to such an investigation and properly weeded out invalid ballots. Further research is required to better ascertain the reasons for these disparities.

Variation within states

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[*] These states are: Alaska, Arizona, California, Colorado, District of Columbia, Iowa, Kansas, New York, Washington, Utah, Ohio, North Carolina, Nebraska, Maryland, New Mexico, New Jersey, and West Virginia.

Even within states consistency was hard to find. Counties differed widely in the rate at which ballots were cast and counted, suggesting that other factors beyond statewide regulations or administrative requirements were at play. This was true in both new and old states.

Election Line, for example, found that:

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

Of the 20 States for which we have gathered county-level provisional ballot data, the rate of counting these ballots frequently varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also impact the use of provisional ballots.

Election Official's Perceptions

In addition to the statistical differences among how states handled provisional voting, there were also differences in how election officials prepared for and evaluated the use of provisional ballots. A survey conducted by the Eagleton Institute at Rutgers University found that county election officials reported different perceptions of provisional balloting, depending upon whether they came from "Old" or "New" States. Both groups reported gaining help from state election offices on how to implement provisional balloting, but in different ways.

- Officials from "new" states reported receiving more guidance on how to evaluate ballots once cast, while officials from "old" states reported receiving more guidance on how to design ballots. Both groups regarded the guidance they received as being helpful.
- Officials from "old" states were more likely to report that they counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.
- Officials from "new" states were more likely to report that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted and that more time was needed to implement provisional voting procedures.
- Officials from "old" states were more likely to report that provisional voting sped up and improved polling place operations and that it helped officials to maintain more accurate registration databases.
- Officials from "new" states were more likely to agree that provisional voting created unnecessary problems for election officials and poll workers.

This data can be interpreted either of two ways. First, experience and familiarity with provisional voting may be the key factor in the degree to which provisional voting is used and in how election officials perceived provisional balloting. Those officials who were more familiar and experienced with the system had more positive reactions to provisional voting and its worth. 81% of officials from experienced states reported that "there is a need to offer voters the opportunity to cast provisional ballots", while only 62% from new states did so.

But another way of explaining the difference is less rosy for provisional ballots. It may be that the states new to provisional balloting have a political culture somewhat different from the states that had offered a provisional ballot before HAVA. The new states may have a history of striking a different balance among the competing voting objectives of access, security, and administrative practicality. Officials in those states may believe that the fail safe offered by provisional voting broadens access at the expense of security and burdens election administrators beyond any perceived benefit. Further survey research could help resolve this question.

Conclusion

States that had previously had some form of provisional ballots and those that did not had different experiences in 2004. Those states that had used a provisional ballot before HAVA states had more ballots cast, found higher levels of those ballots to be legitimate, and had much higher levels of provisional ballots in their final vote tallies. Election officials in those states also felt that provisional ballots were easier to administer and more worthwhile than did their counterparts in states new to provisional voting. The strongest influence noted in this study was simply that of experience with the process.

If the difference is mostly one of experience, in subsequent elections, officials will be more prepared for and comfortable with the implementation of provisional ballots. This should lead to greater consistency among the states and more positive ratings of it as a system. If, on the other hand, the different experiences with provisional ballots reflects different political cultures among the states, consistency among the states may take longer to increase.

Other factors, such as verification laws and requirements for whether out-of-precinct ballots may be counted, will continue to cause variance across the country, but as voters and election officials become more familiar with the system, that variance may stabilize. In sum, provisional balloting was applied inconsistently in 2004, returning a wide range of results. Since the states have considerable latitude in how they meet HAVA's requirements for provisional voting, a considerable degree of variation among the states is to be expected in the future. If that variation stems from differences in political culture among the states, it is likely to persist.

Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

This question demands two different kinds of answers. First, how do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process? Second, objectively how well did the process appear to be managed?

While essentially all (98%) county-level local elections officials considered the instructions they received from their state governments to be "useful" or "very useful," the crucial question is how well did the process work on election day? The lack of consistency among and within states in the use of provisional ballots and evaluating those ballots indicates considerable variation in the understanding of the process by election officials.

Four out of ten local election officials felt poll workers needed more training to understand their responsibilities. One sign of dissatisfaction with the functioning of the provisional voting process is the number of states that have amended their statutes on provisional voting to include specific language about poll worker training. Among these states are Colorado, Indiana, New Mexico and Washington.

Statutes, of course, reflect only part of the story. For example, Alabama – a state new to provisional voting – undertook a concerted training effort on how to handle and count provisional ballots. It also created a notification system whereby voters could verify if their vote counted within 10 days of casting their ballots. These steps were not dictated by statute, but reflected the initiative of f local elections officials. Their leadership indicates a good understanding of their responsibilities under HAVA and the state statute.

More than 8 out of 10 county-level elections officials reported receiving instructions from their state government regarding the implementation of provisional voting. Topics covered in those instructions from the states included:

- How to administer the provisional voting system
- Who is eligible to vote using a provisional ballot
- How individuals vote using a provisional ballot
- The jurisdiction where individuals can vote by provisional ballot
- Whether the provisional ballot could be used as an application to update the voter's registration
- How to train poll workers to process provisional ballots
- How to provide voters with the opportunity to verify if their provisional ballot was counted
- Guidelines for determining which provisional ballots are to be counted
- Strategies to reduce the need for voters to use provisional ballots
- How to design the structure of the provisional ballot

Those local election officials believe the most effective efforts to improve the provisional voting process would be to reduce the use of provisional ballots as a failsafe by improving technology – such as registration databases – available to voters and poll workers. Reflecting their understanding of the provisional voting process, local elections officials call for:

- State-sponsored websites where voters can verify their registration status before Election Day.
- Access by poll-workers to statewide voter registration databases at polling place.

While local election officials report that the instructions they received were "useful," the quality of the information they receive is not the only influence on their performance. They recognize that timing is critically important. They understand that they must receive clear instructions from their state election agencies early enough to absorb, understand, and pass it along as operational instructions to poll workers and voters.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:09 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
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Subject Peer Review Group

Karen,

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

Tom O'Neill

RecruitmentStatus.doc

STATUS OF PEER REVIEW GROUP RECRUITMENT
(As of August 17, 2005)

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

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:04 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Survey Cover Letter and Questionnaire

This is an important e-mail (for audit purposes) related to the large survey of election officials which Eagleton did.

By law, the EAC could not do this survey without going through a lengthy OMB approval process. Eagleton was free to do this survey as long as it was for their clarification purposes and they did not seek our advice on the survey.

K

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:59 AM -----

"Tom O'Neill"
[redacted]
07/07/2005 11:19 AM

To klynndyson@eac.gov
cc
Subject Re: Survey Cover Letter and Questionnaire

Karen,

We share the understanding expressed below. Attached is the revised cover letter to local election officials.

Thanks,

Tom

----- Original Message -----
From: klynndyson@eac.gov
To: [redacted]
Cc: cpaquette@eac.gov
Sent: Thursday, July 07, 2005 11:14 AM
Subject: Re: Survey Cover Letter and Questionnaire

Tom-

A review of the EAC's Statement of Work for Research Assistance to develop Voluntary Guidance on

Provisional Voting and Voting Identification procedures, does not require that a survey of the elections community, regarding their experiences with provisional voting or voter identification be conducted. Therefore, the EAC is not required to review or approve such a survey.

Should Eagleton elect to conduct such a survey to further educate and inform their work on these topics, they may conduct such a survey on their behalf only.

Regards-

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

"Tom O'Neill" [redacted]

07/06/2005 11:11 AM

To klynndyson@eac.gov
cc
Subject Survey Cover Letter and Questionnaire

Karen,

Attached are the two documents we just discussed. The cover letter will go to 2800+ election officials around the country. It alerts the recipients that they may be called to participate in a survey as a part of our research for the EAC. The survey will, in fact, interview only 400 of the local election officials, but notifying them all is necessary because the selection of those called will be random, and, if the surveyors cannot reach the first county drawn for the sample, they will move on to the next. The need to have your review of the letter is the most urgent. Unless it goes to SBRI, the survey firm that will make the actual calls, today, we will fall behind an already tight schedule.

The questionnaire would also benefit from your review. As you know, question wording is an art. A good question elicits the information sought without biasing the response. Your review, however, can help ensure that the survey elicits information that EAC will find useful. We will rely on the results to draw conclusions about provisional voting as experienced by county-level election officials. It inquires about the quality and timeliness of information and training they may have received from state-level officials and about the information and training that they, in turn, passed on to poll workers. I don't believe this information is available anywhere else. We are over-sampling officials in states that did not offer provisional ballots before 2004 so that we can draw some inferences about the difference between their experience and the experience of officials for whom provisional voting was more familiar. These inferences may provide helpful in shaping the guidance the EAC offers the states for the 2006 election.

Your comments on the questionnaire are also needed urgently, but I believe we can hold SBRI at bay on this document until tomorrow.

As I mentioned, my computer died on Monday, so I have only sporadic access to email. I will have access until about 2 today and then won't be back on-line until early evening. You can always reach me by phone at 908-794-1030. If you would like to send a fax, that number is 609-737-8674.

Thanks,

Tom RevisedFinal cover letter 070607.doc

Deliberative Process Privilege

EAGLETON INSTITUTE OF POLITICS
—— CENTER FOR PUBLIC INTEREST POLLING ——

PROVISIONAL VOTING SURVEY

Sample: Local Elections Officials
National sample: 400 telephone interviews

Draft Version: June 28, 2005

Initial Screener

Hello, my name is ________________ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a survey for the U.S. Election Assistance Commission (EAC), a federal government commission, to study provisional voting based on experiences from the 2004 election. May I please speak to the individual who was responsible for supervising the election at the county, borough, municipality, or parish level?

[IF UNSURE WHO THIS INDIVIDUAL IS:]

In particular, may I please speak to the individual who was responsible for overseeing voting procedures for the 2004 election at the county, borough, municipality, or parish level such as the Registrar of Elections, County Clerk, Commissioner of Elections, Administrator of Elections, or Clerk of Court?

Consent

Hello, my name is ________________ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a survey for the U.S. Election Assistance Commission (EAC), a federal government commission, to study provisional voting based on experiences from the 2004 election. We recently sent you a letter requesting your participation in the confidential survey we are conducting with county elections officials as part of a national contract with the Elections Assistance Commission (EAC). We would very much like to include your opinions and would really appreciate it if you could assist us by providing as much information as you can to the best of your knowledge. The information you will be sharing today will be used to provide provisional voting policy recommendations. This information will be maintained at a secure site and your name will not be identified in the report. So, please do not hesitate to share all the information you have.

You were randomly selected for the survey from a nationally representative list of election officials. We are not selling anything, and not asking for money. All your answers are completely confidential.

The survey should take no more than 10 or 15 minutes to complete.

IF NECESSARY: If you should have any questions about the study, you may contact the Research Project Coordinator, April Rapp, at the Eagleton Center for Public Interest Polling at 732-932-9384 ext. 261.

IF RESPONDENT DECLINES TO PARTICIPATE, ADDITIONAL PRODDING NEEDED:
–Your participation is very important because only 400 election officials have been randomly selected for this survey and your views will be used to provide provisional voting policy recommendations. We would be happy to fax you a letter outlining the study objectives. [If yes, can I please have your fax number?] (RECORD FAX NUMBER)

Screener

1. On Election Day, November 2nd, 2004 was it your responsibility to supervise the election at the county, borough, municipality, or parish level?

1.	Yes	(GOTO Q2)
2.	No	(GOTO Q1a)
97.	[Don't Know]	(TERMINATE)
99.	[Refused]	(TERMINATE)

1a. May I please have the name and phone number of the individual who was responsible for supervising the 2004 election at the county, borough, municipality, or parish level?

[RECORD NAME/PHONE NUMBER OF REFERRAL] (THANK AND TERMINATE)

Jurisdiction

2. Which of the following best characterizes your job title on Election Day, November 2nd, 2004?

(READ AND ROTATE)

1. Registrar of Elections
2. County Clerk
3. Commissioner of Elections
4. Administrator of Elections
5. Clerk of Court
6. [Other] (specify) (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

3. Is your jurisdiction characterized as a county, borough, municipality, parish, or something else?

(READ AND ROTATE)

1. County
2. Borough
3. Municipality
4. Parish
5. Something else (specify)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

General: Provisional Voting

Now, I would like to ask you some questions about provisional voting.

4. When was provisional voting implemented in your state? (READ LIST)

1. In 2004 before Election Day
2. Sometime during 2003
3. Sometime during 2002
4. At some point before 2002
97. [Don't Know] (VOL)
99. [Refused] (VOL)

5. What's your best estimate of the total number of provisional ballots cast in the 2004 election in your jurisdiction, whether they were ultimately counted or not? Your best estimate is fine.

   1. Less than 100
   2. Between 100 to just under 500
   3. Between 500 to just under 1000
   4. 1000 or more
   97. [Don't Know] (VOL)
   99. [Refused] (VOL)

(ASK ONLY IF Q5=1-4)

6. In your opinion, how many of these provisional ballots were counted – a lot, some, very few, or none at all?

   1. A lot
   2. Some
   3. Very few
   4. None at all
   97. [Don't Know] (VOL)
   99. [Refused] (VOL)

7. In your opinion, which of the following, if any, created the <u>most</u> need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

   (READ AND ROTATE)

   1. Individual's name not listed on the voter registration rolls
   2. <u>First time</u> voters couldn't provide the proper identification
   3. Voters eligibility challenged
   4. Registered voters could not provide the proper identification
   5. Other (specify) (VOL)
   97. [Don't Know] (VOL)
   99. [Refused] (VOL)

8. In your opinion, which of the following, if any, prevented provisional ballots from being validated and ultimately counted in the 2004 Election?

(READ AND ROTATE)

1. Individual failed to provide the identification required to validate the provisional ballot
2. Signature on the provisional ballot did not match the signature on the registration form
3. Provisional ballot cast in the incorrect voting precinct
4. Individual was not registered
5. Other (specify) (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

Pre-Election Experience: Instructions and Information Received (Content and Quality)

9. Were provisional voting instructions provided by the state government in the 2004 Election – as a matter of law, administrative procedure, or did the state not provide instructions for provisional voting?

1. State law
2. Administrative procedure
3. State did not provide instructions for provisional voting (GOTO Q.23)
4. Other: (specify) (VOL) (GOTO Q.23)
5. None of the above (VOL) (GOTO Q.23)
97. [Don't Know] (VOL) (GOTO Q.23)
99. [Refused] (VOL) (GOTO Q.23)

(ASK ONLY IF Q9=1-2)

STATE GOVERNMENT INSTRUCTIONS AND INFORMATION

10. Which of the following provisional voting instructions, if any, did you receive from the state government?

(ACCEPT MULTIPLE RESPONSES; ROTATE LIST; PAUSE AFTER EACH RESPONSE)

1. How to administer provisional voting
2. Who is eligible to vote using a provisional ballot
3. How individuals vote using a provisional ballot
4. The location where individuals can vote by provisional ballot
5. If the provisional ballot is used as an application to change the voter's registration
6. How to verify the voter's eligibility to cast a provisional ballot
7. Poll worker training
8. How to provide voters with the opportunity to verify if their provisional ballot was counted
9. What voter identification is required to cast a provisional ballot
10. Guidelines for which provisional ballots are to be counted
11. Strategies to reduce the need for voters to use provisional ballots
12. Other (specify) (VOL)
13. All of the above (VOL)
14. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

(ASK ONLY IF Q10=1)

11. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions on how to administer provisional voting -- very useful, somewhat useful, not very useful, or not useful at all?

1. Very useful
2. Somewhat useful
3. Not very useful
4. Not useful at all
97. [Don't know] (VOL)
99. [Refused] (VOL)

(ASK ONLY IF Q10=2)

12. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for determining who is eligible to vote using a provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

1. Very useful
2. Somewhat useful
3. Not very useful
4. Not useful at all
97. [Don't know] (VOL)
99. [Refused] (VOL)

(ASK ONLY IF Q10=3)

13. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions on how individuals vote using a provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

1. Very useful
2. Somewhat useful
3. Not very useful
4. Not useful at all
97. [Don't know] (VOL)
99. [Refused] (VOL)

(ASK ONLY IF Q10=4)

14. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on the location where individuals can vote by provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

1. Very useful
2. Somewhat useful
3. Not very useful
4. Not useful at all
97. [Don't know] (VOL)
99. [Refused] (VOL)

(ASK ONLY IF Q10=5)

15. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for <u>if the provisional ballot is used as an application to change the voter's registration</u> -- very useful, somewhat useful, not very useful, or not useful at all?

    1. Very useful
    2. Somewhat useful
    3. Not very useful
    4. Not useful at all
    97. [Don't know] (VOL)
    99. [Refused] (VOL)

(ASK ONLY IF Q10=6)

16. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on <u>how to verify the voter's eligibility to cast a provisional ballot</u> -- very useful, somewhat useful, not very useful, or not useful at all?

    1. Very useful
    2. Somewhat useful
    3. Not very useful
    4. Not useful at all
    97. [Don't know] (VOL)
    99. [Refused] (VOL)

(ASK ONLY IF Q10=7)

17. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on <u>poll worker training</u> -- very useful, somewhat useful, not very useful, or not useful at all?

    1. Very useful
    2. Somewhat useful
    3. Not very useful
    4. Not useful at all
    97. [Don't know] (VOL)
    99. [Refused] (VOL)

(ASK ONLY IF Q10=8)

18. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to provide voters with the opportunity to verify if their provisional ballot was counted -- very useful, somewhat useful, not very useful, or not useful at all?

    1. Very useful
    2. Somewhat useful
    3. Not very useful
    4. Not useful at all
    97. [Don't know] (VOL)
    99. [Refused] (VOL)

(ASK ONLY IF Q10=9)

19. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for what voter identification is required to cast a provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

    1. Very useful
    2. Somewhat useful
    3. Not very useful
    4. Not useful at all
    97. [Don't know] (VOL)
    99. [Refused] (VOL)

(ASK ONLY IF Q10=10)

20. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing guidelines by which provisional ballots are to be counted -- very useful, somewhat useful, not very useful, or not useful at all?

    1. Very useful
    2. Somewhat useful
    3. Not very useful
    4. Not useful at all
    97. [Don't know] (VOL)
    99. [Refused] (VOL)

(ASK ONLY IF Q10=11)

21. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing strategies to reduce the need for voters to use provisional ballots -- very useful, somewhat useful, not very useful, or not useful at all?

1. Very useful
2. Somewhat useful
3. Not very useful
4. Not useful at all
97. [Don't know] (VOL)
99. [Refused] (VOL)

(ASK ONLY IF Q22=1-11)

22. Thinking generally, how useful were the provisional voting instructions you received from the state government -- very useful, somewhat useful, not very useful, or not useful at all?

1. Very useful
2. Somewhat useful
3. Not very useful
4. Not useful at all
97. [Don't know] (VOL)
99. [Refused] (VOL)

Implementation of Instructions and Distribution of Information to Election Employees

Now I'm going to ask you some questions about poll worker training.

23. Please tell me how the provisional voting instructions and information you received were provided to poll workers. If you don't know how the information was provided to poll workers, just tell me and we'll move on.

(ACCEPT MULTIPLE RESPONSES; READ EACH ITEM AND ROTATE LIST)

1. Sent a letter
2. Sent an email
3. Held a meeting
4. Conducted an internal informational session or workshop
5. Hired a third-party or independent firm to conduct a training course
6. Other (specify) (VOL)
7. None of the above (VOL)
97. [Don't know] (VOL)

99. [Refused] (VOL)

24. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

(ACCEPT MULTIPLE RESPONSES; READ EACH ITEM AND ROTATE LIST)

1. Access to a list of eligible voters in the jurisdiction
2. Telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction
3. Maps of adjacent precincts for poll workers to help voters locate their residence and corresponding polling place
4. Additional staff such as "greeters" at polling places to direct voters to the correct polling location
5. Other (specify) (VOL)
6. None of the above (VOL)
97. [Don't know] (VOL)
99. [Refused] (VOL)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed:

(READ AND ROTATE Q.25 – Q.32)

[PROBE: Would you say that is very successfully, somewhat successfully, not very successfully, or not successfully at all?]

1. Very successfully
2. Somewhat successfully
3. Not very successfully
4. Not successfully at all
97. [Don't Know] (VOL)
99. [Refused] (VOL)

25. Provide <u>training</u> to poll workers on how to <u>administer</u> provisional ballots.

26. Provide <u>written</u> procedures to poll workers on how to <u>administer</u> provisional ballots.

27. Provide poll workers with <u>written</u> procedures on the <u>casting</u> of provisional ballots.

28. Provide poll workers with <u>written</u> procedures on the <u>counting</u> of provisional ballots.

29. Provide poll worker <u>training</u> for the <u>casting</u> of provisional ballots.

30. Provide poll worker <u>training</u> for the <u>counting</u> of provisional ballots.

31. Make information available to help poll workers determine voters' assigned precinct or polling place.

32. Provide training to help poll workers determine voters' assigned precinct or polling place.

Post-Election Experience: Counting Ballots

33. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

(ACCEPT MULTIPLE RESPONSES; READ AND ROTATE LIST)

1. Notification by mail
2. Dedicated Telephone Hotline
3. Email notification
4. Website confirmation
5. Telephone local or county election office
6. All of the above (VOL)
7. None of the above (VOL)
8. Other (specify) (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

34. How confident are you that provisional ballots were properly distributed to voters?

1. Very confident
2. Somewhat confident
3. Not very confident
4. Not at all confident
97. [Don't Know]
99. [Refused]

35. How confident are you that provisional ballots were accurately validated?

1. Very confident
2. Somewhat confident
3. Not very confident
4. Not at all confident
97. [Don't Know] (VOL)
99. [Refused] (VOL)

36. How confident are you that validated provisional ballots were counted?

1. Very confident
2. Somewhat confident
3. Not very confident
4. Not at all confident
97. [Don't Know] (VOL)
99. [Refused] (VOL)

General Perceptions

37. Now I am going to read you a list of items, please tell me which one you believe presented the biggest challenge in implementing provisional voting for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

(RANDOMLY ROTATE 1-5).

1. Training of poll workers
2. Length of time provided to implement provisional voting
3. Clarity of instruction received from your State Government
4. Adequacy of instruction received from your State Government
5. Available staff at the polling place
6. Other (specify): (VOL)
7. All of the above (VOL)
8. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

Please tell me how much you agree or disagree with the following statements about provisional voting in your jurisdiction for the 2004 Election.

(READ AND ROTATE Q.38 –Q.49)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

1. Agree strongly
2. Agree somewhat
3. Neither agree nor disagree
4. Disagree somewhat
5. Disagree strongly
97. [Don't Know] (VOL)
99. [Refused] (VOL)

38. More training was needed on how to administer provisional ballots.

39. More funding was needed to educate voters of their rights to cast a provisional ballot.

40. More information should have been provided to voters about where provisional ballots must be cast in order to be counted.

41. More information was needed for poll workers to determine the voter's assigned precinct and polling place.

42. More time was needed to implement provisional voting procedures.

43. The lack of training created problems implementing the provisional voting requirements.

44. The provisional voting system was easy to implement.

45. The provisional voting system in my polling jurisdiction was a success.

46. I feel that voters in my jurisdiction were provided adequate information to successfully cast a provisional ballot.

47. Adequate support was provided to me to assist in the implementation of provisional voting.

48. I feel that voters in my jurisdiction were provided adequate information to validate if their provisional ballots were counted.

49. The lack of information created problems implementing the provisional voting requirements.

Recommendations for the Future

50. Now I am going to read you a list of items, please tell me which one you believe is the most important change needed in the implementation of provisional voting.

(RANDOMLY ROTATE 1-6)

1. More funding for poll worker training
2. More time for poll worker training
3. Better instruction from the Federal Government
4. Better instruction from the State Government
5. More instruction from the Federal Government
6. More instruction from the State Government
7. Other: specify (VOL)
8. All of the above (VOL)
9. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

Please tell me how much you agree or disagree with the following statements about provisional voting.

(READ AND ROTATE Q.51–Q.61)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

1. Agree strongly
2. Agree somewhat
3. Neither agree nor disagree
4. Disagree somewhat
5. Disagree strongly
97. [Don't Know] (VOL)
99. [Refused] (VOL)

51. Statewide voter registration database would decrease the need for voters to cast provisional ballots.

52. State sponsored website designed for individuals to check registration status online would decrease the need for voters to cast provisional ballots.

53. Provisional voting protects the rights of voters by ensuring that people who are eligible to vote are allowed to do so and have their ballots counted.

54. Provisional voting speeds up and improves polling place operation on Election Day by resolving disputes between voters and poll workers.

55. Provisional voting helps election officials maintain more accurate registration databases.

56. Provisional voting causes delays in the final vote tally while voter eligibility is being verified.

57. Provisional voting may prevent voters from keeping their registration current.

58. Provisional voting compromises voter anonymity.

59. Provisional voting creates the opportunity for voter fraud.

60. Provisional voting creates unnecessary problems for election officials and poll workers.

61. Provisional voting can be avoided by the adoption of different registration procedures.

62. Which of the following do you think would be the most effective in increasing the number of provisional ballots validated and ultimately counted in an election?

(READ AND ROTATE)

1. In-precinct provisional voting only
2. Provisional voting from a central location rather than polling places
3. In-jurisdiction provisional voting only
4. Provide voters whose ballot was rejected because they failed to complete part of their voter registration form with a "second chance"
5. Provide poll workers access to a list of eligible voters in the jurisdiction
6. Provide a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction
7. Provide "greeters" at polling places to direct voters to the correct polling location
8. Other (specify) (VOL)
9. All of the above (VOL)
10. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

63. Which of the following do you think would be the most effective in reducing the number of provisional ballots cast in an election?

(READ AND ROTATE)

1. Statewide voter registration database available at polling places
2. Use the provisional ballot application as a request to change the voter's registration
3. Provide additional staff such as "greeters" at polling places to direct voters to the correct polling location
4. State sponsored website dedicated to enabling individuals to check registration status online
5. Provide poll workers access to a list of eligible voters in the jurisdiction
6. Provide a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction
7. Other (specify) (VOL)
8. All of the above (VOL)
9. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

Demographics (ASK ALL)

I only have a few more questions for statistical purposes....

D1. As election official were you hired, appointed, or elected to the position?

1. Hired
2. Appointed
3. Elected
4. Other/Specify (VOL)
97. [Don't know] (VOL)
99. [Refused] (VOL)

D2. For how many years have you served as the election official? [CODE IN WHOLE NUMBERS – IF LESS THAN 1 YEAR RECORD AS "LESS THAN ONE YEAR"]

D3. For statistical purposes only, could you please tell me your ethnic or racial background?

1. White/Caucasian
2. Hispanic/Latino
3. African-American/Black
4. Asian American/Asian
5. Native American
6. Other/Specify (VOL)
97. [Don't know] (VOL)
99. [Refused] (VOL)

D4. Interviewer please record gender.

1. Female
2. Male

That completes our survey. Thank you very much for your time and cooperation.

Read-In From Sample

A. STATE

B. COUNTY

C. OLD PROVISIONAL VOTING STATES (27 States/200 Total Responses)
   1. AK, AZ, AR, CA, DC, FL, IA, KS, MD, NM, NY, NC, OR, RI, SC, VA, WA, WV, CO, NE, NJ, OH, AL, KY, MI, MS, TX

D. NEW PROVISIONAL VOTING STATES (17 States/200 Total Responses)
   1. CT, DE, GA, HI, IL, IN, LA, MA, MO, MT, NV, OK, PA, SD, TN, UT, VT

E. REGION
   1. West (MT, CO, NM, AZ, UT, NV, WA, OR, CA, AK, HI)
   2. South (DE, MD, DC, VA, WV, NC, SC, GA, FL, KY, TN, AL, MS, AR, LA, OK, TX)
   3. Midwest (OH, IN, IL, MI, IA, MO, SD, NE, KS)
   4. Northeast (VT, MA, RI, CT, NY, NJ, PA)

F. BATTLEGROUND STATES (FL, IA, MO, NM, OH, OR, PA, WV)

G. NONBATTLEGROUND STATES (MT, CO, AZ, UT, NV, WA, CA, AK, HI, DE, MD, DC, VA, NC, SC, GA, KY, TN, AL, MS, AR, LA, OK, TX, IN, IL, MI, SD, NE, KS, VT, MA, RI, CT, NY, NJ)

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

Eagleton Institute of Politics
191 Ryders Lane, New Brunswick NJ 08901

DATE

NAME
TITLE
ADDRESS
CITY STATE ZIP

Dear NAME,

The U.S. Election Assistance Commission (EAC) has awarded Rutgers, The State University of New Jersey, a contract to study county elections officials' experiences with provisional voting in the 2004 national election. This research will address key issues related to provisional voting in the context of effective election administration, voter access, and ballot security. The study's findings will be used to provide recommendations for the EAC to consider in the development of its guidance to the states in 2006.

The EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency that provides federal funds to states to upgrade voting systems and improve election administration. The EAC publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

Participants in this study will be randomly selected and asked to share their experiences administering the provisional voting process in the 2004 election. The study will be conducted July 18th through August 5th. During that period a survey researcher <u>may</u> call you if you are, in fact, chosen at random from a national list of election officials. The researcher will ask you questions about your experience with provisional voting, your evaluation of the process, and your recommendations to improve it. The survey will take approximately 10-15 minutes. All of your answers will be completely confidential, and no statement or comment you make will be ascribed to you in our report of findings.

At the contract's conclusion, we will present a report to the EAC including analysis of provisional voting procedures as well as recommendations for future practices and procedures. The guidance document based on our research will be published by the EAC in the Federal Register for public review and comment, and the EAC will hold a hearing on the guidance document this fall before adopting it.

Your participation in the study will be important in assuring that it reflects the views of election officials who have direct experience with provisional voting. Thank you for your time.

Sincerely,

[scanned signature]

Ruth B. Mandel
Director and Board of Governors Professor of Politics

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:00 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: July 12 and Peer Review Group

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:58 AM -----

"Tom O'Neill"
[redacted]
06/27/2005 09:52 AM

To klynndyson@eac.gov
cc
Subject July 12 and Peer Review Group

Karen:

The Eagleton project team usually meets on Tuesdays from 9:30 -- 11. At tomorrow's meeting I'll confirm with the group that we will meet on July 12, if that will fit your schedule. If that is a bad time for you, we have moved our meeting time before and can do so again if we can align participants' calendars. This week for the first time, Laura Williams --representing Moritz-- will join the session by telephone. For the meeting on the 12th I'll try to arrange for Ned Foley and Dan Tokaji to participate as well.

On the Peer Review Group
Your request to include the election officials on the group caused us to think anew about its purpose and composition. We agreed that election officials would add a useful dose of real world experience to the research. One of them could be Peter Veniero, who as AG (where he served before appointment to our Supreme Court) was New Jersey's chief election official. We would like Tom Wilkey to suggest a couple of former, senior election officials who could contribute to the PRG's work. While the PRG needs the experience of election administrators, we believe that perspective can be conveyed best by a senior, former official who is not appointed to represent a group of such officials --only to represent him or herself. We believe the group's advice would be most useful if came from people with the perspective provided by now being some distance from the daily fray.

This analysis emerged from a Friday conference call in which Ingrid Reed, Ned Foley, Laura Williams and I rethought the composition of the PRG. We concluded that the group should not, after all, include members from organizations that have taken advocacy positions on the issues we are researching. We agreed that the PRG should focus on methodologies and research findings rather than debate policy outcomes. PRG members should be free to represent themselves, rather than argue from an existing institutional position on policy. The PRG is not an advisory committee or a group of stakeholders to vet and take some ownership of policy recommendations. We'll consult the stakeholders separately, beginning with the list of groups in the proposal.

To replace those from advocacy organizations, we believe it would be preferable to add more members(from academia and the law, such as Pam Karlan, Guy-Uriel Charles, or Dan Lowenstein, whose CVs are summarized on the attachment. Finally, I will draft a mission statement for the PRG. Attached is a revised list of proposed PRG members, showing 2 slots to be filled by senior, former election officials.

Hope you have received the Gantt chart by now and that it fits your needs.

Ingrid Reed and I will attend the meeting in New York on Thursday and look forward to seeing you there.

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, June 24, 2005 6:36 PM
To: [redacted]
Cc: twilkey@eac.gov
Subject: RE: Peer Review Group

Tom-

I'd like to schedule a conference call among EAC and Eagleton staff for sometime the early part of the week of July 11. Please let me know dates and times on your end and I'll coordinate with staff here.

During the call we can review your monthly report and cover any problems, challenges, needs, etc. that the Eagleton team may have.

Thanks

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

"Tom O'Neill" [redacted]

06/23/2005 02:43 PM

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

Thanks, Karen.

Tom
-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, June 23, 2005 2:24 PM
To: [redacted]
Subject: Re: Peer Review Group

Tom-

I will be back to you early next week with EAC's feedback on this.

Our initial reaction is that the group needs to include some local and/or state-level election officials, who have first-hand experience with these issues.

We will get you additional names and reactions by mid-week next week.

Thanks
K

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

"Tom O'Neill" [redacted]

06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
Subject Peer Review Group

Karen,

As you probably recall, one of the features of our proposal was the creation of a Peer Review Group to look over our findings, conclusions and draft reports before we prepare final drafts for the EAC's review. The EAC asked that before recruiting members of the PRG twe submit names for EAC's review. The aim, course, is to assemble a panel that is experienced, informed, and balanced.

Attached is a list of potential PRG members drawn from academia, the law, and non-profit organizations with interests in this area. Please look it over.

We may conclude that the PRG should also include two or three former government officials now in academia or related fields. We have a conference call with our partners at Moritz planned for tomorrow or Friday to decide a) if former officials should be included in the PRG and b)if so, who they should be. I'll keep you informed of our thinking as it develops.

Tom PROPOSED MEMBERS OF PRGREV.doc

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:59 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Peer Review Group

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:57 AM -----

"Tom O'Neill"
[redacted]
06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
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Tom

PROPOSED MEMBERS OF PEER REVIEW GROUP.doc

PROPOSED MEMBERS OF PEER REVIEW GROUP

R. Michael Alvarez, Ph.D.
Professor of Political Science
California Institute of Technology
rma@hss.caltech.edu
626-395-4422
Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College; his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

Deborah Goldberg, Ph.D
Program Director, Democracy Program
Brennan Center for Justice at NYU School of Law
161 Avenue Of The Americas, 12th Floor
New York, NY 10013
212-998-6730
Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.

Martha E. Kropf, Ph.D.
Assistant Professor of Political Science
University of Missouri-Kansas City
816-235-5948; KropfM@umkc.edu
Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

Wade Henderson, Esq.
Executive Director
Leadership Conference on Civil Rights
1629 K Street, NW, 10th Floor
Washington, DC 20006
Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU.

Kay Maxwell
President
League of Women Voters of the U.S.
1730 M Street NW, Suite 1000

Washington, DC 20036-4508
202-429-1965
Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project.

Tim Storey
Program Principal
Legislative Management Program
National Conference of State Legislatures
7700 East First Place
Denver, CO 80230
303-364-7700
or
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
202-624-5400

Peter G. Veniero, Esq.
Counsel
Sills, Cummis, Epstein and Gross, PC
One Riverfront Plaza
Newark, New Jersey 07102
Tel: 973- 643-7000
Verniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:58 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised Release Draft 2

Goodness- there was a lot of back-and-forth about this silly press release!!

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:55 AM -----

Jeannie Layson/EAC/GOV
06/14/2005 08:17 AM

To "Tom O'Neill" [redacted]
cc klynndyson@eac.gov, cpaquette@eac.gov
Subject Re: Revised Release Draft 2

Tom,
The revised release incorporating our changes is attached. Call me if you have any questions, and thank you for your patience throughout this process. Please let me know when it's released.

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

www.eac.gov Eagleton release rev.doc

Deliberative Process Privilege

Rutgers

News
Office of Media Relations
ur.rutgers.edu/medrel

Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 13, 2005

DRAFT FOR APPROVAL

EDITOR'S NOTE: ATTENTION POLITICAL, ASSIGNMENT EDITORS

EAGLETON INSTITUTE OF POLITICS WINS $560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION

Rutgers Institute to Study Provisional Voting, Voter Identification Procedures

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a $560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to consider in the development of its guidance to the states for the 2006 elections, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security.

Eagleton will examine the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of potential alternatives to existing practices and procedures.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:57 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Eagleton draft press release

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:55 AM -----

Jeannie Layson/EAC/GOV
06/10/2005 12:57 PM

To ghillman@eac.gov, rmartinez@eac.gov, pdegregorio@eac.gov
cc klynndyson@eac.gov, cpaquette@eac.gov, jthompson@eac.gov
Subject Eagleton draft press release

Commissioners,
Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

DRAFT FOR APPROVAL

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- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?

- Did local procedures reflect the state's uniform procedures?
- Did all states and election jurisdictions make these procedures available to the public, political parties and candidates before the election?

- To what extent were poll workers appropriately trained on how to administer provisional ballots, including establishing the identity of the potential voter seeking a provisional ballot?

- How were federal funds under the Help America Vote Act used to educate voters about their rights to cast a provisional ballot and where such provisional ballots must be cast to be counted?

- In states where a provisional ballot had to be cast at the voter's assigned polling place or precinct, was information available to poll workers to allow them to determine the voter's assigned precinct and polling place?

- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

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Eagleton release.doc

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

Deliberative Process Privilege

Rutgers

News
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Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 13, 2005

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-more-

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Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:55 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised release for Eagleton Research

Darrell-

check you chronology on the various e-mail I have sent you related to the contract press release. I believe this is the one that was the final. You only need to include the final version in the files.

K

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:52 AM -----

"Tom O'Neill"
[redacted]
06/08/2005 12:47 PM

To jlayson@eac.gov
cc klynndyson@eac.gov, john.weingart@rutgers.edu
Subject Revised release for Eagleton Research

NewsRelease1.doc

```
Jeannie:

Attached is the news release we discussed yesterday, with the addition you
requested.

As I mentioned, we are eager to make this announcement.

Thanks,

Tom
```

Deliberative Process Privilege

Rutgers

News
Office of Media Relations
ur.rutgers.edu/medrel

Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 2, 2005

DRAFT FOR APPROVAL

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-more-

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EAC'S COMMUNICATIONS MANAGER JEANNIE LAYSON WANTS THE RELEASE TO INCLUDE A PARAGRAPH SUMMARIZING THE METHODS WE WILL USE TO ANSWER THE QUESTIONS POSED IN THE BULLETED LIST ABOVE. SHE WANTS TO REVIEW THE REVISED RELEASE BEFORE SUBMITTING TO THE EAC CHAIR FOR APPROVAL.

202-566-3103 or jlayson@eac.gov

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

050602-x
EIP-USEACVoterContract.rel.ed

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: June 30 Hearing Panelists

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:50 AM -----

"Tom O'Neill"
[redacted]
06/02/2005 05:30 PM

To jthompson@eac.gov
cc ireed@rutgers.edu, "Edward Foley" <foley.33@osu.edu>, klynndyson@eac.gov
Subject June 30 Hearing Panelists

Julie:

Thanks for you call. Our conversation helped me crystallize further the recommendations we will make to the Commission about the material to be covered at the hearing.

I believe we will recommend two panels of 3 or 4 people each for the June 30 hearing. One will cover the relatively narrow HAVA Voter ID requirements with presentations by 2 state-level voting administrators with contrasting experiences. The contrast between Michigan and Pennsylvania might prove especially instructive because it would demonstrate the relationship between the quality of the data base and requirements for voter identification. Since the hearing is being held in Manhattan, perhaps inviting a speaker from New York instead of Pennsylvania would make sense. I'd appreciate your thoughts on that.

Two other speakers could address the issue of broader Voter ID requirements to reduce vote fraud by requiring some form of identification for each voter at the polling place. The experience in Mississippi over the past 5 years has been particularly dramatic, as illustrated by the attached news article from the local press last year. As we discussed, inviting the 2 legislators profiled in the article might make for powerful testimony.

The final 2 speakers we believe should be academics who have studied the relationship between Voter ID regimes, voter participation and vote fraud and who have conflicting evidence and conclusions to offer. We have found at least two university based researchers who can present the view that stricter Voter ID requirement do not reduce vote fraud and do dampen participation. We have not yet identified a researcher from the other end of the spectrum, but we are looking actively. Your suggestions would be most welcome.

Below is our current list of possibilities for your review.

Tom

JUNE 30 HEARING
POSSIBLE PANELISTS OR TOPICS

Possible States to be represented by one or more panelists

Mississippi
Debate over voter id issues has been dramatic. The resonance of Mississippi on voting issues would lend interest to the testimony. Voter id legislation was not approved in the current legislative session and has been a source of contention at least since 1999.

Michigan
Strong database state; lax Voter ID requirements don't seem to present as much of a problem (although one hears rumors about Detroit); interesting contrast to NY. With Pennsylvania would present contrasts in the importance of the Statewide Voter Data Base

New York
Had a significant problem with provisional ballots, suggesting that their relatively lax ID rules might be problematic; also Tom Wilkey will have good contacts there. The hearing is there.

Pennsylvania
Relatively lax ID rules and apparently quite a few problems with provisional ballots in 2004. Had start up problems with its data base and would offer comparisons between counties where the data base was well established and those where is new. Should be weighed against New York for inclusion as a contrast with Michigan

Wisconsin
Governor Doyle vetoed the legislature's first attempt at tightening voter ID requirements, and instead offered a package to recruit and train more qualified poll workers and calls for improvements in voter registration procedures.

Academics on Voter ID, Turnout, and Vote Fraud

Spencer Overton
Professor, GWU Law School. Has written op-eds arguing that the empirical research is insufficient to support the need for more ID to reduce fraud. He is working on a book on the topic.

John Fortier
Research Fellow at the American Enterprise Institute. Recommended by Norm Ornstein. Google revealed no publications on this topic by Fortier.

Lorraine C. Minnite
Assistant Professor of Political Science, Barnard College. Lead researcher of the Demos election fraud study and researcher in immigrant voting patterns. Found that the incidence of fraud perpetrated by individual voters in the United States was very low and had a minimal impact on election outcomes.

Guy-UrielCharles
Associate Professor of Law, Center for the Study of Political Psychology University of Minnesota. His areas of interest incoude Election Law and Election Law Disputes and African American Voting Concerns. He is a member of the National Research Commission on Elections and Voting of the Social Science Research Council

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Arrangements for June 30 Meeting

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:50 AM -----

"Tom O'Neill"
[redacted]
06/01/2005 10:47 PM

To jthompson@eac.gov
cc klynndyson@eac.gov
Subject Arrangements for June 30 Meeting

Julie,

Karen Lynn-Dyson suggested I consult directly with you about arrangements for the Commission's June 30 meeting in New York. As I understood our discussions in Washington last week, as your consultants we will be responsible for organizing the portion of the meeting that will cover the Voter Identification issue, while EAC staff will organize the regular meeting of the Commissioners. Is that understanding correct?

Because time is short, we know we must move quickly on the arrangements.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

4. Will the EAC issue the news release about the meeting and the panel?

5. What do federal regulation indicate that I may offer speakers we bring in from

these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

These are the states we are currently evaluating for the Voter ID presentations: Arizona, California, Mississippi, .Michigan, New York, Pennsylvania, and Wisconsin. We may pick 4 of these, or fewer if we determine that one state should have two panelists representing different viewpoints: Karen tells me you have been working with several of these, and your counsel would sharpen the judgment we bring to bear on our selection. I am particularly interested in the Mississippi experience and would like to discuss that with you. . .perhaps by phone. The project team is aiming to agree on a panel of speakers to submit to the the EAC early next week. Panelists should receive their invitations at least two weeks in advance (more would be better), especially if we want to get onto their schedules.

I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can always reach me-- [redacted]

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:49 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: project kickoff meeting with EAgleton Institute

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:47 AM -----

Carol A. Paquette/EAC/GOV
05/17/2005 06:34 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC
Subject project kickoff meeting with EAgleton Institute

Commissioners -

We have tentatively scheduled May 26 at 2:30 for a kickoff meeting here with Eagleton Institute. What will happen at this meeting is Eagleton will introduce their key people and make a brief presentation on their approach to performing the provisional voting and voter ID studies. It will be an opportunity to ask questions, raise any concerns, and/or provide guidance as they begin this work. Please advise if you wish to attend this meeting. I expect it will last about an hour.

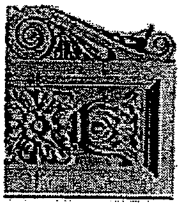
Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:46 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Prov Voting and Voter ID Reports

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:44 AM -----



Bert A. Benavides/EAC/GOV
06/19/2006 05:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc "Thomas O'Neill" [redacted] Thomas R. Wilkey/EAC/GOV@EAC
Subject RE: Prov Voting and Voter ID Reports

Karen, by copy I am attaching the referenced letter sent to Peter Weingart on 6-15-06.

Eagleton - Weingart, 6-16-06.doc

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
06/19/2006 04:51 PM

To "Thomas O'Neill" [redacted]
cc Bert A. Benavides/EAC/GOV@EAC
Subject RE: Prov Voting and Voter ID Reports

Tom-

Will ask Tom's office to get you a copy.

Regards-

K

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

**Deliberative Process
Privilege**

U. S. ELECTION ASSISTANCE COMMISSION
OFFICE OF THE EXECUTIVE DIRECTOR
1225 New York Avenue, NW, Suite 1100
Washington, DC. 20005

June 15, 2006

Mr. John Weingart, Associate Director
Eagleton Institute of Politics
Rutgers University
191 Ryders Lane
New Brunswick NJ 08901-8557

Dear Mr. Weingart:

During a recent briefing by staff, the EAC discussed and reviewed possible next steps with the provisional voting and voter identification studies as well as the Eagleton contract which is scheduled to conclude on June 30, 2006.

We were in agreement that Eagleton's work on the EAC contract should conclude, as scheduled, by June 30, 2006. In preparation for this conclusion, the EAC requests that the comments and suggestions which were noted during the EAC's recent Board of Advisors and Standards Boards meeting (and were described in Mr. O'Neil's June 8, 2006 letter to Chairman DeGregorio) be included in the final draft report on provisional voting which Eagleton will deliver to the EAC on or about June 30, 2006. The Commissioners have determined that they will take this final draft report and, from it, may develop guidance and best practice recommendations that will be presented to the Board of Advisors and Standards Boards for further review.

The EAC Commissioners have also reviewed and considered next steps with the voter identification draft report which Eagleton has prepared. While the final disposition of the results and findings of this study, on the part of the EAC, are still unclear, the Commissioners have asked that the final draft report of this study also be prepared and submitted to the EAC not later than June 30, 2006.

We look forward to receiving these reports. On behalf of the EAC thank you for the considerable time and energy which the Eagleton/Moritz team has devoted to these critical election issues.

Sincerely,

Thomas R. Wilkey

"Thomas O'Neill" <tom_oneill@verizon.net>

"Thomas O'Neill"
[redacted]
06/19/2006 04:30 PM

To klynndyson@eac.gov
cc
Subject RE: Prov Voting and Voter ID Reports

Karen,

I have not heard from Tom Wilkey. If he signed the letter you drafted for him last Tuesday, could you email me a copy while we await the arrival of the hard copy by mail. I probably don't need to remind you that we have only 11 days left on this contract and need to know how we should move ahead to complete it.

Tom O'Neill

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, June 16, 2006 9:33 AM
To: [redacted]
Subject: Re: Prov Voting and Voter ID Reports

Tom-

On Tuesday I drafted a letter for the Executive Director's signature.
He should be in touch today or Monday at the latest.

Regards-

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

"Thomas O'Neill" [redacted]

06/16/2006 08:49 AM

To klynndyson@eac.gov
cc
Subject Prov Voting and Voter ID Reports

Karen,

Could you please give me your reading of the status of a response to our letter last week that raised some issues for resolution by the Commission on the completion of our work during the final few weeks of the contract period. The Team needs to know how to proceed during the remaining 2 weeks of the project.

Thanks,

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:45 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Letter to Commissioner DeGregorio

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:43 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
06/08/2006 10:31 AM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Tom O'Neill" [redacted]
Subject Letter to Commissioner DeGregorio

DeGregorioFinal.060806.doc Karen - I am attaching a copy of a letter we are just faxing and mailing
to Commissioner DeGregorio. Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

EAGLETON INSTITUTE OF POLITICS

Paul S. DeGregorio
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
Fax: (202) 566-3127

June 8, 2006

Dear Chairman DeGregorio:

Karen Lynn-Dyson relayed the Commission's decision in your meeting of June 1 to take more time to consider how to proceed with the delivery of EAC research reports on provisional voting and voter identification.

The Eagleton-Moritz research team, of course, encourages the Commission's thoughtful consideration of the two reports, but we are mindful of the need to deliver revised documents that respond to the Commission's comments by the close of our contract on June 30th. We believe that if we receive the Commission's final comments on the Provisional Voting report by June 19 we will be able to complete any additional work that the Commission might request and incorporate the results in our final reports before the end of the contract period.

Based on suggestions raised at the meetings, we already plan to supplement the Provisional Voting report with some brief, additional information about the influence of the fail-safe ballot provisions of the National Voting Rights Act on the experience with provisional voting in 2004.

We understand that the Commission must submit the final draft Voter ID report to the same review process by your advisory boards as was followed with the Provisional Voting paper. We understand that step is a prerequisite for wider release. We would appreciate your advice on how to handle this review, given the rapidly approaching end of our contract.

We hope the commission will use both reports, as intended from the outset of this project, as the basis for recommendations for better, if not best, practices to the states. If the Commission cannot decide to issue such recommendations to the states, we hope it will promptly release the reports to provide the states and the broader elections community with this information, analysis and perspective on the issues.

We recognize, based on the reactions at the meetings of the Standards Board and, particularly, the Board of Advisors, that some of the findings, conclusions, and recommendations of the reports will be controversial with some of the Commission's constituencies. But we also believe, based on the comments of the Peer Review Group, the advisors assembled by the Commission, and our response to their critiques, that the reports are grounded on solid research by a well-qualified, nonpartisan team and that the reports will provide new information for the policy process. We believe this information will contribute to achieving the EAC mission of providing helpful information that the states may or may not choose to implement.

022818

191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557

Tel: (732) 932-9384
Fax: (732) 932-6778

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

E-mail: eagleton@rci.rutgers.edu
Web: www.eagleton.rutgers.edu

The information in the reports can improve the policy process by raising the level of debate over increasingly volatile issues related to election administration. We believe our reports will prove useful to the states as they complete preparations for the 2006 elections. Moreover, the elections community is aware of this work, and awaits the analysis and conclusions.

We look forward to working with you to conclude this research in a way that will serve the public interest.

Very truly yours,

Thomas M. O'Neill
Project Director

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:45 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Presentations at the EAC Governing Boards

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:43 AM -----

"Tom O'neill"
[redacted]
05/22/2006 03:39 PM

To klynndyson@eac.gov
cc asherrill@eac.gov, jthompsonhodgkins@eac.gov
Subject RE: Presentations at the EAC Governing Boards

Karen,

The PowerPoint presentations for the Standards Board and the Advisory Board are attached. See you tomorrow.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, May 22, 2006 3:18 PM
To: [redacted]
Cc: asherrill@eac.gov; jthompsonhodgkins@eac.gov
Subject: RE: Presentations at the EAC Governing Boards

Hi Tom-

Just checking to see if your Power Point slides might be ready.

When they are, please send them on to me and hit Reply to All as Julie Hodgkins and Amie Sherrill (the Chairman's Special Assistant) would like copies before the presentation.

Thanks

BriefinfgPVADVBD524.ppt BriefinfgPVSTDBD523.ppt

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission

1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Briefing for
U. S. Election Assistance Commission
Board of Advisors

May 24 , 2006

Provisional Voting

Findings and Recommendations

022824

EAGLETON INSTITUTE OF POLITICS

Rutgers, The State University of New Jersey

MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY

Project Management Team

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

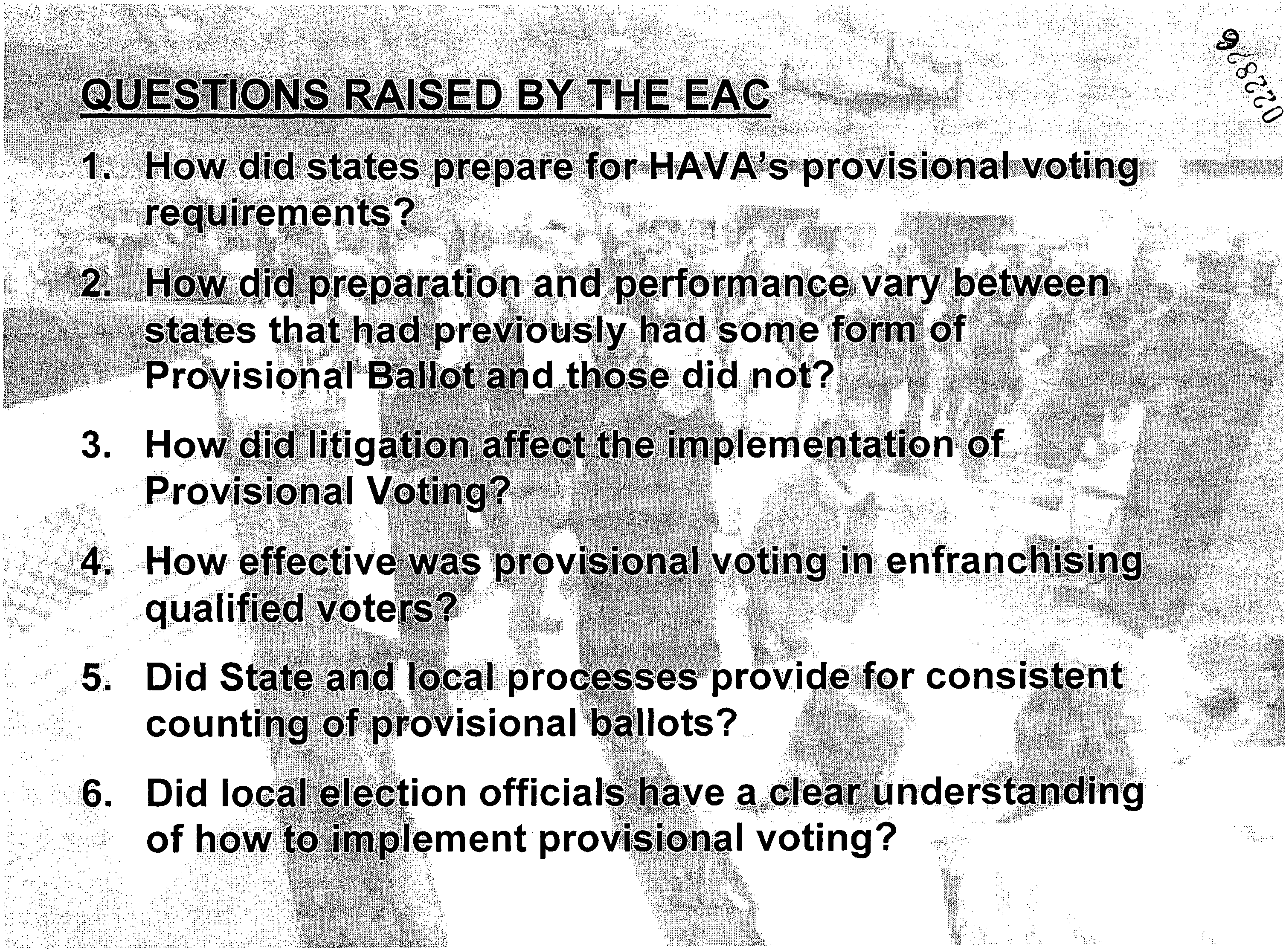
Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law
The Moritz College of Law
Director of Election Law @ Moritz

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

Daniel P. Tokaji, Assistant Professor of Law
The Moritz College of Law

John Weingart, Associate Director
The Eagleton Institute of Politics

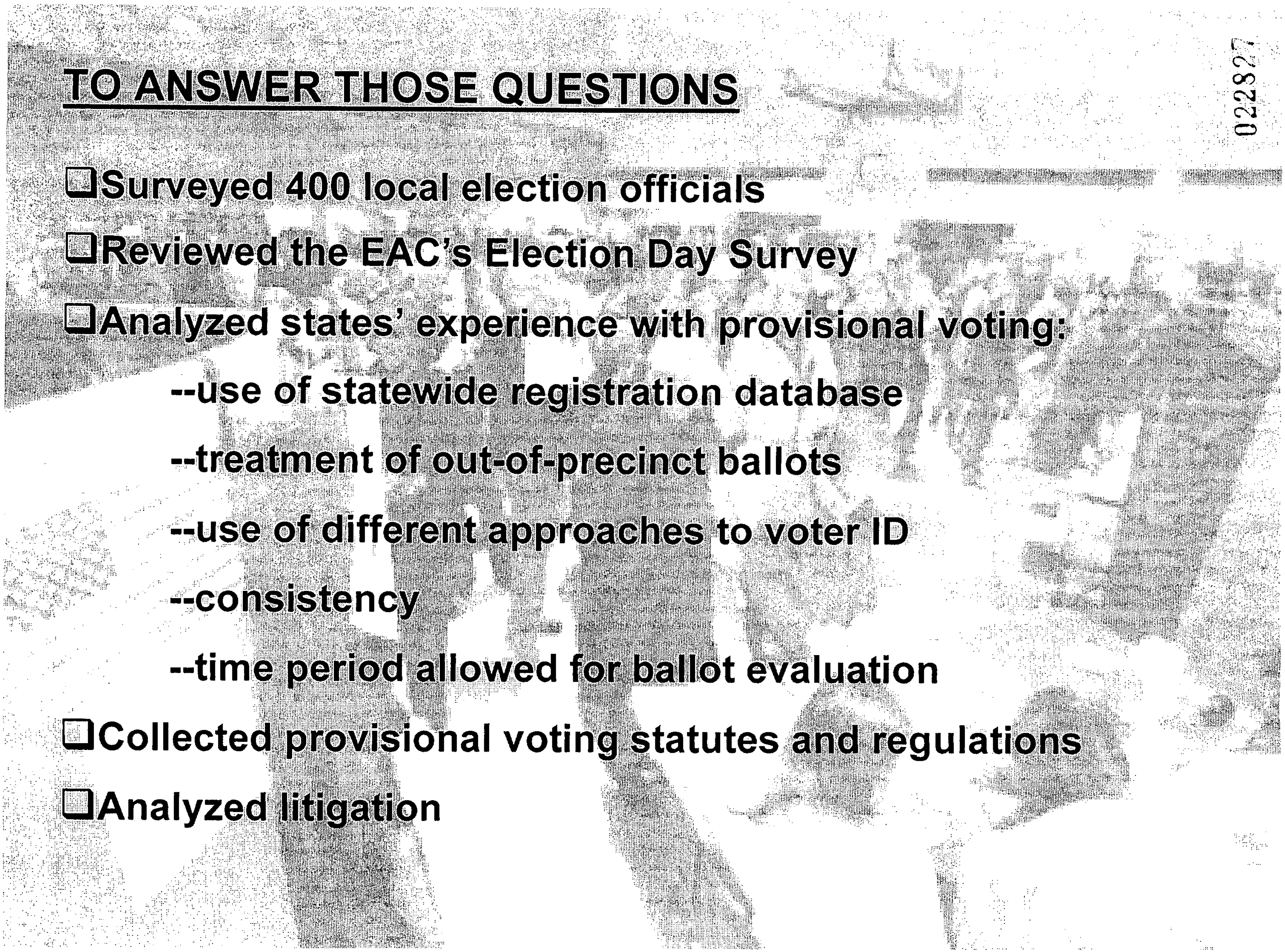
Thomas M. O'Neill, Consultant
The Eagleton Institute of Politics
Project Director



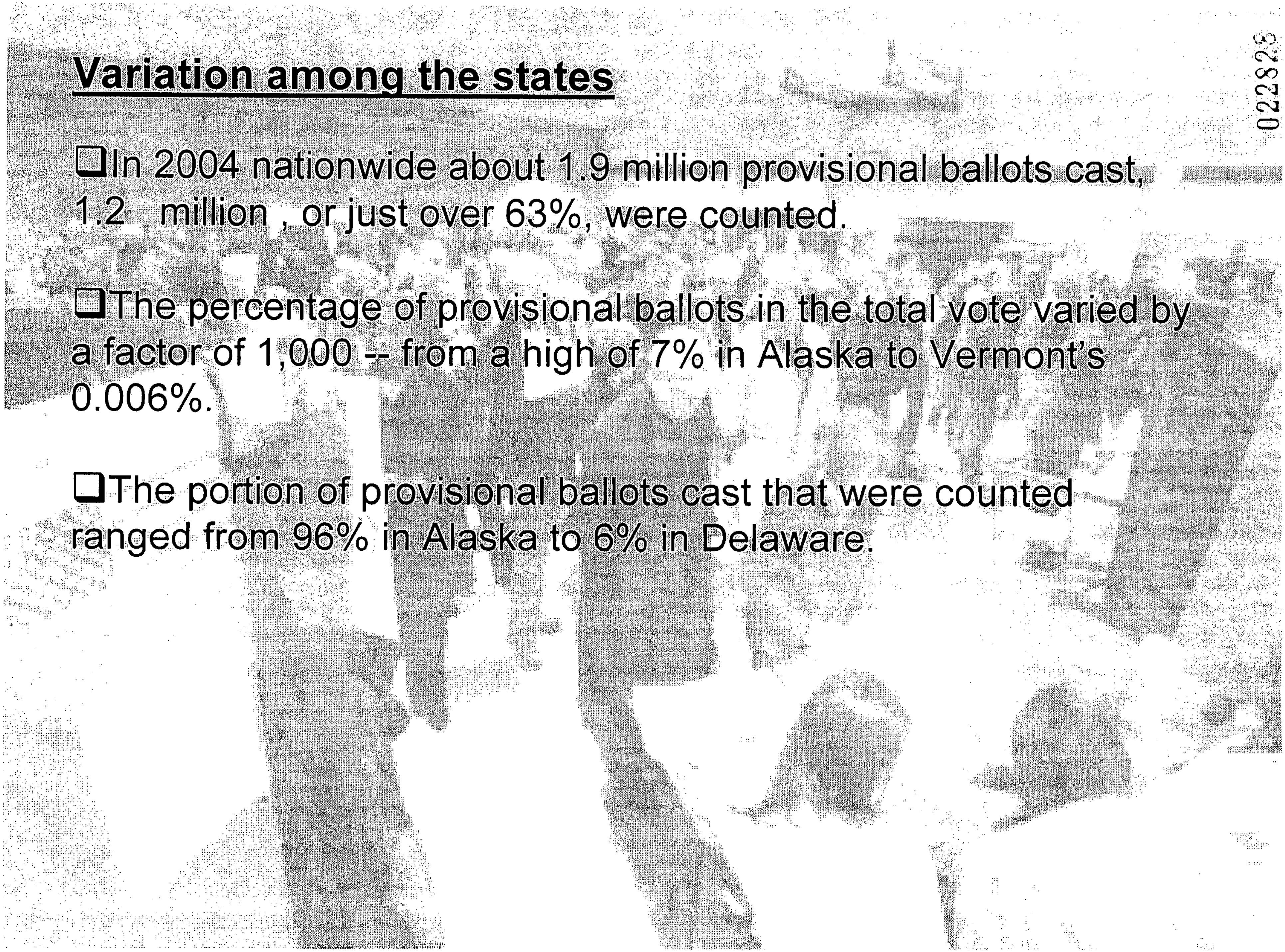
QUESTIONS RAISED BY THE EAC

1. How did states prepare for HAVA's provisional voting requirements?
2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?
3. How did litigation affect the implementation of Provisional Voting?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did State and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

TO ANSWER THOSE QUESTIONS

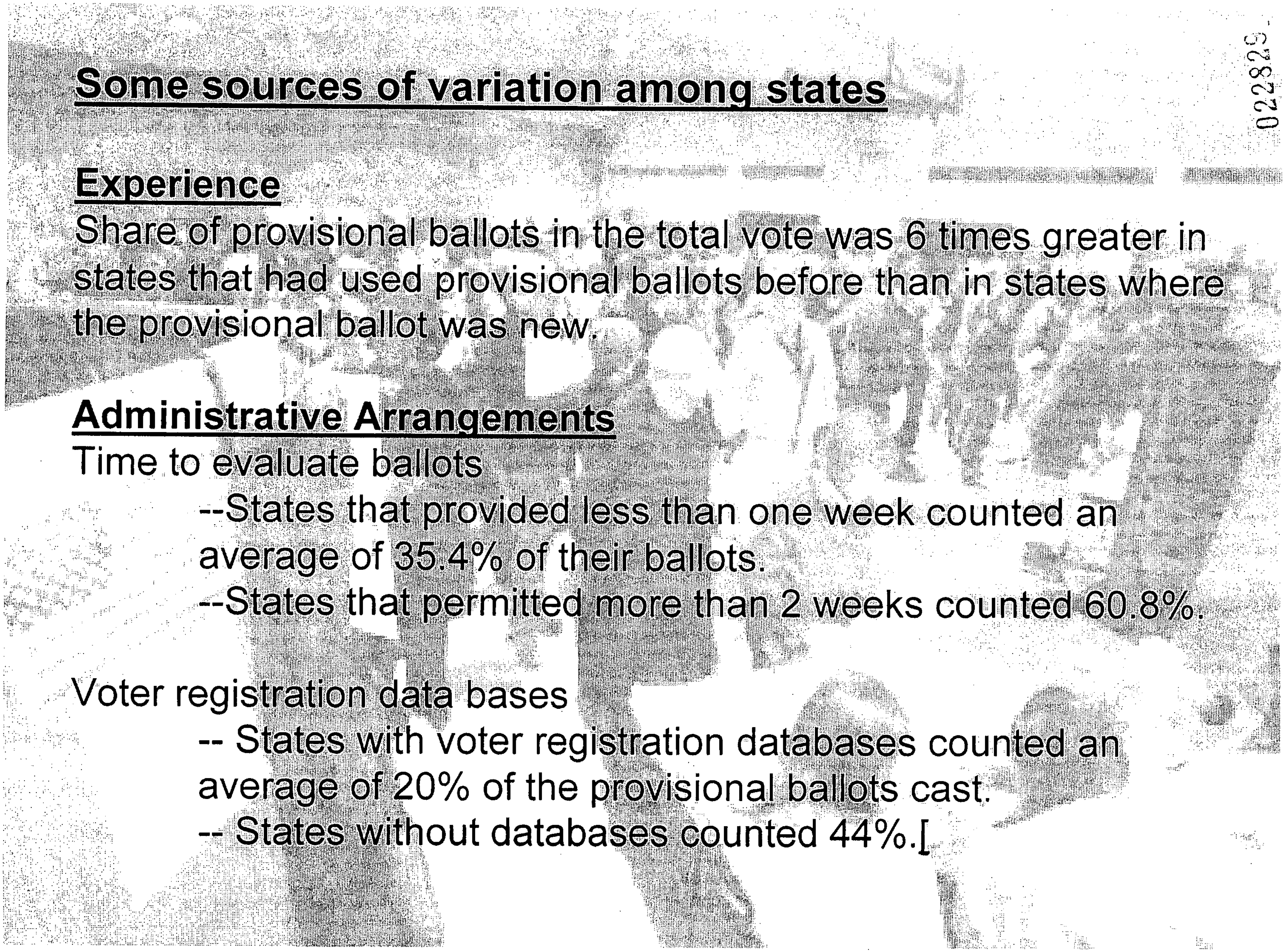


- Surveyed 400 local election officials
- Reviewed the EAC's Election Day Survey
- Analyzed states' experience with provisional voting:
    - --use of statewide registration database
    - --treatment of out-of-precinct ballots
    - --use of different approaches to voter ID
    - --consistency
    - --time period allowed for ballot evaluation
- Collected provisional voting statutes and regulations
- Analyzed litigation



Variation among the states

- In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million , or just over 63%, were counted.
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.



Some sources of variation among states

Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

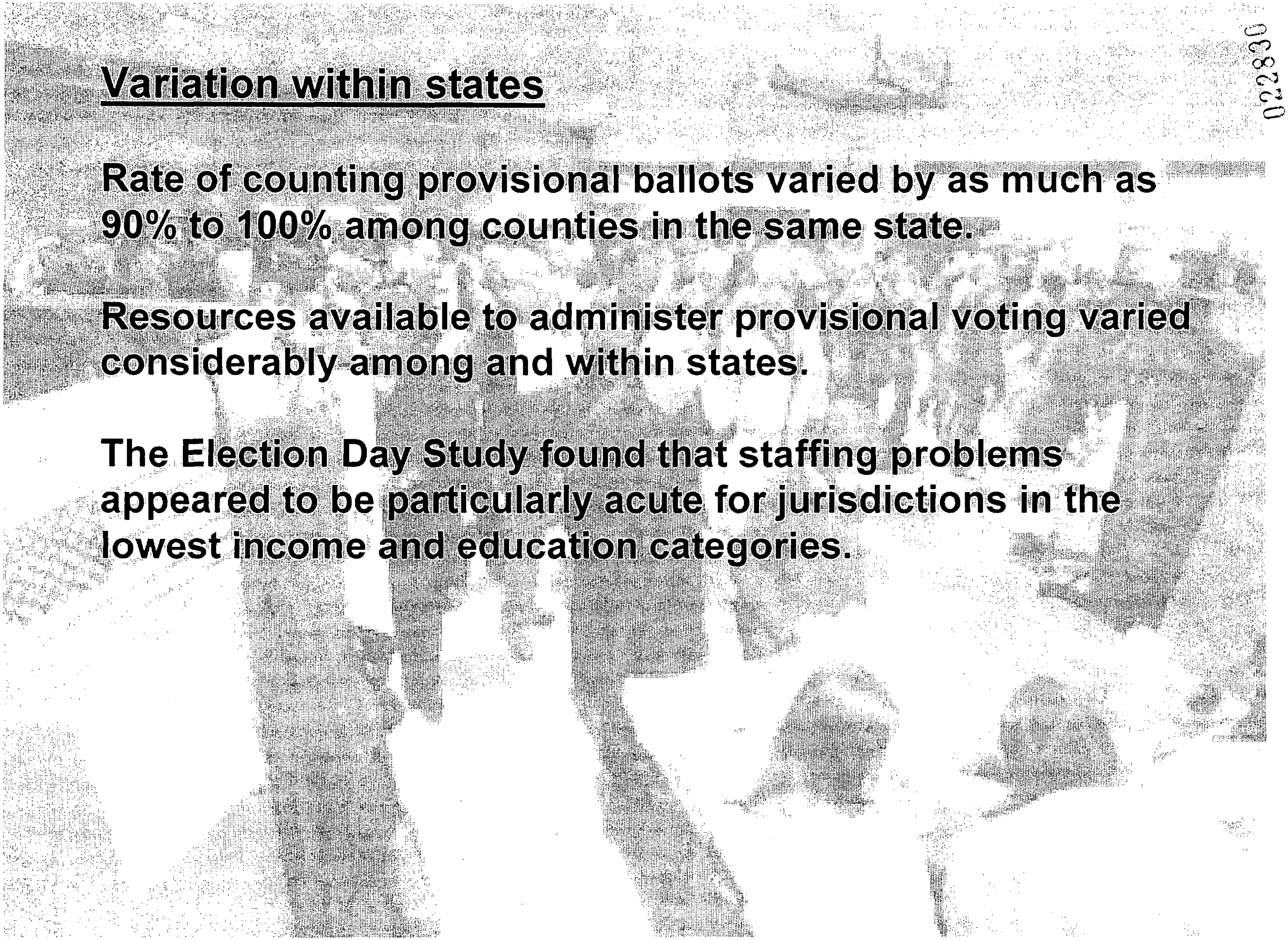
Administrative Arrangements

Time to evaluate ballots

- --States that provided less than one week counted an average of 35.4% of their ballots.
- --States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

- -- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- -- States without databases counted 44%.[

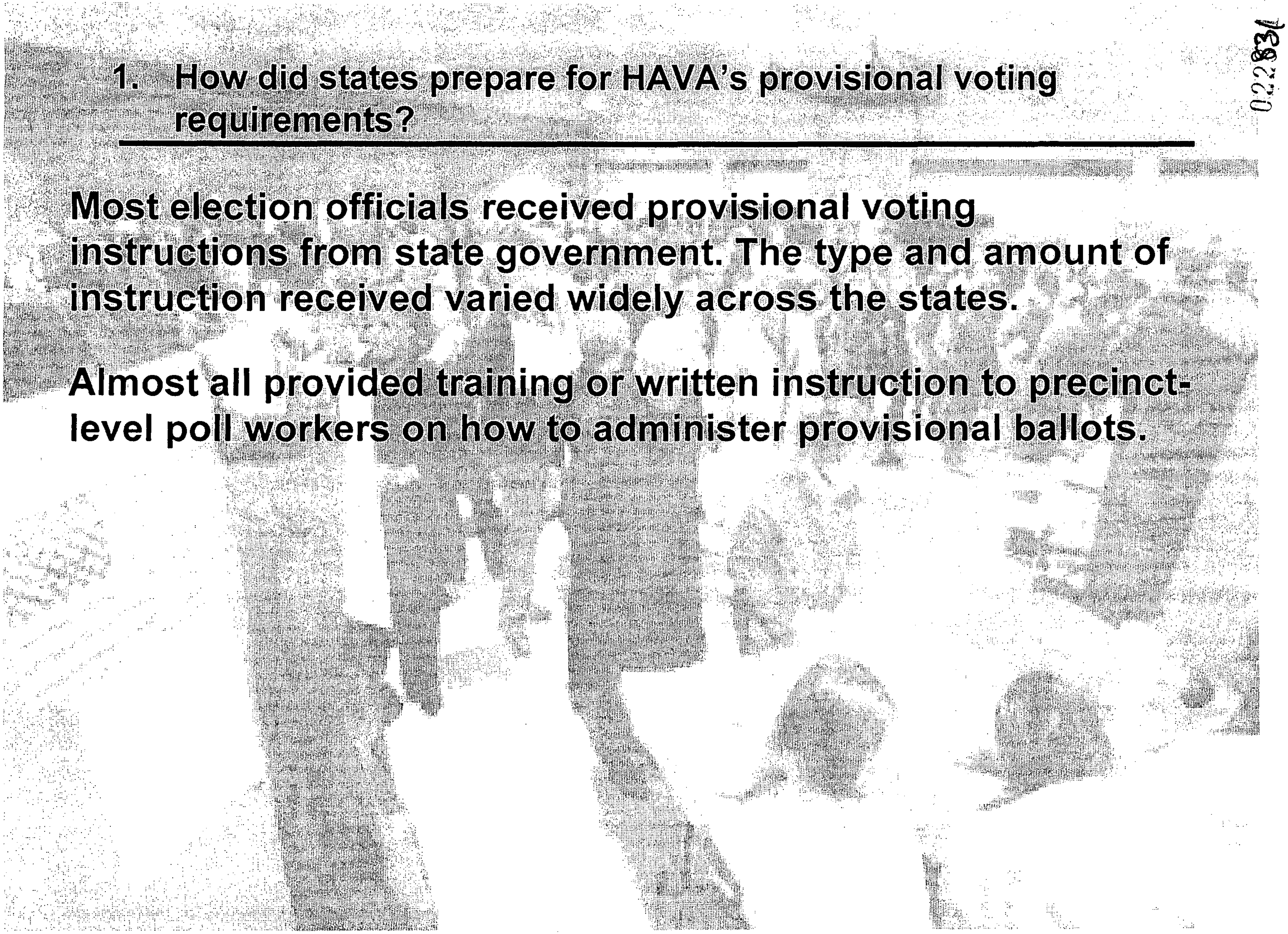


Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied considerably among and within states.

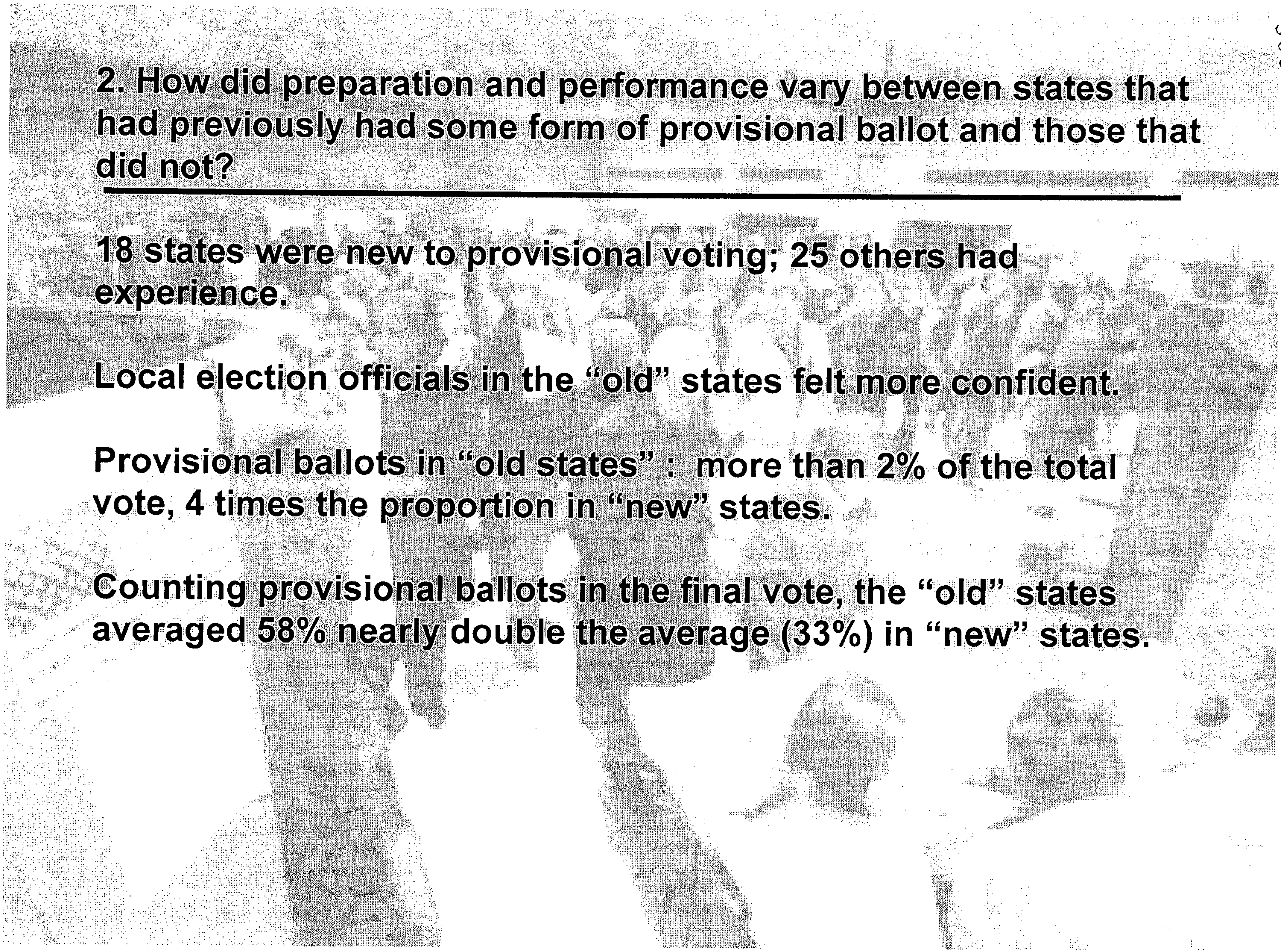
The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.



1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.



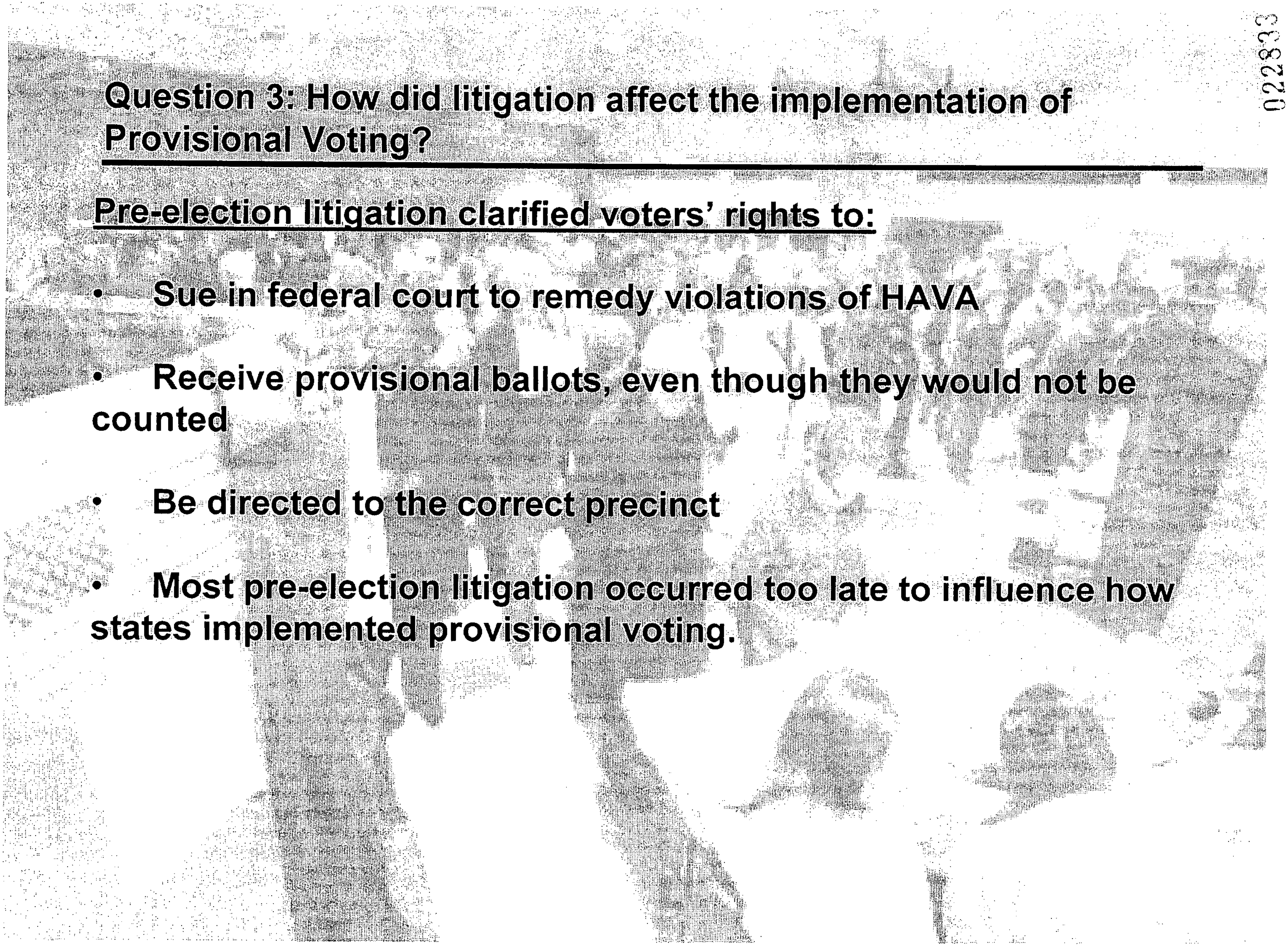
2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

18 states were new to provisional voting; 25 others had experience.

Local election officials in the "old" states felt more confident.

Provisional ballots in "old states" : more than 2% of the total vote, 4 times the proportion in "new" states.

Counting provisional ballots in the final vote, the "old" states averaged 58% nearly double the average (33%) in "new" states.

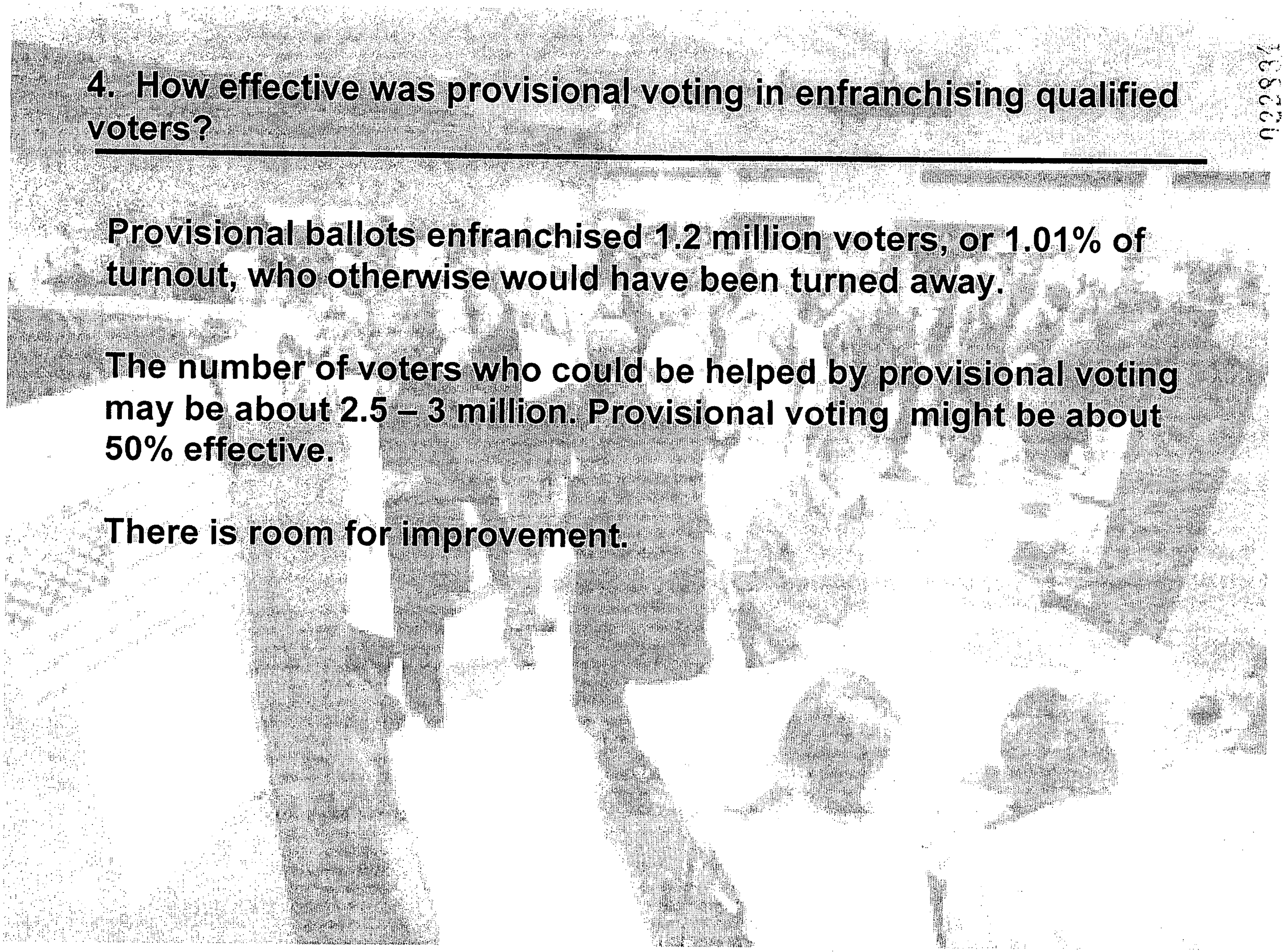


Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.

4. How effective was provisional voting in enfranchising qualified voters?

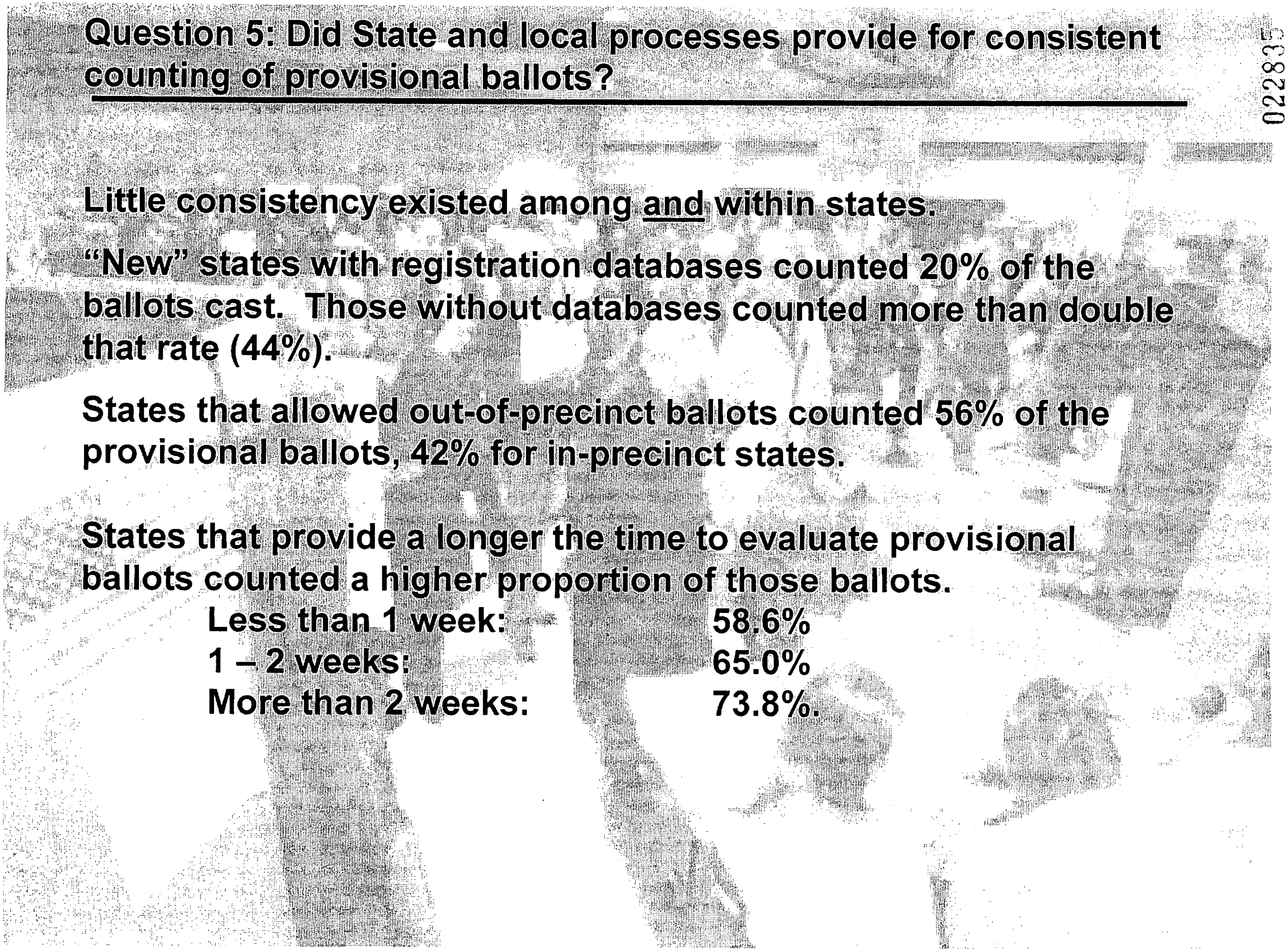


Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?



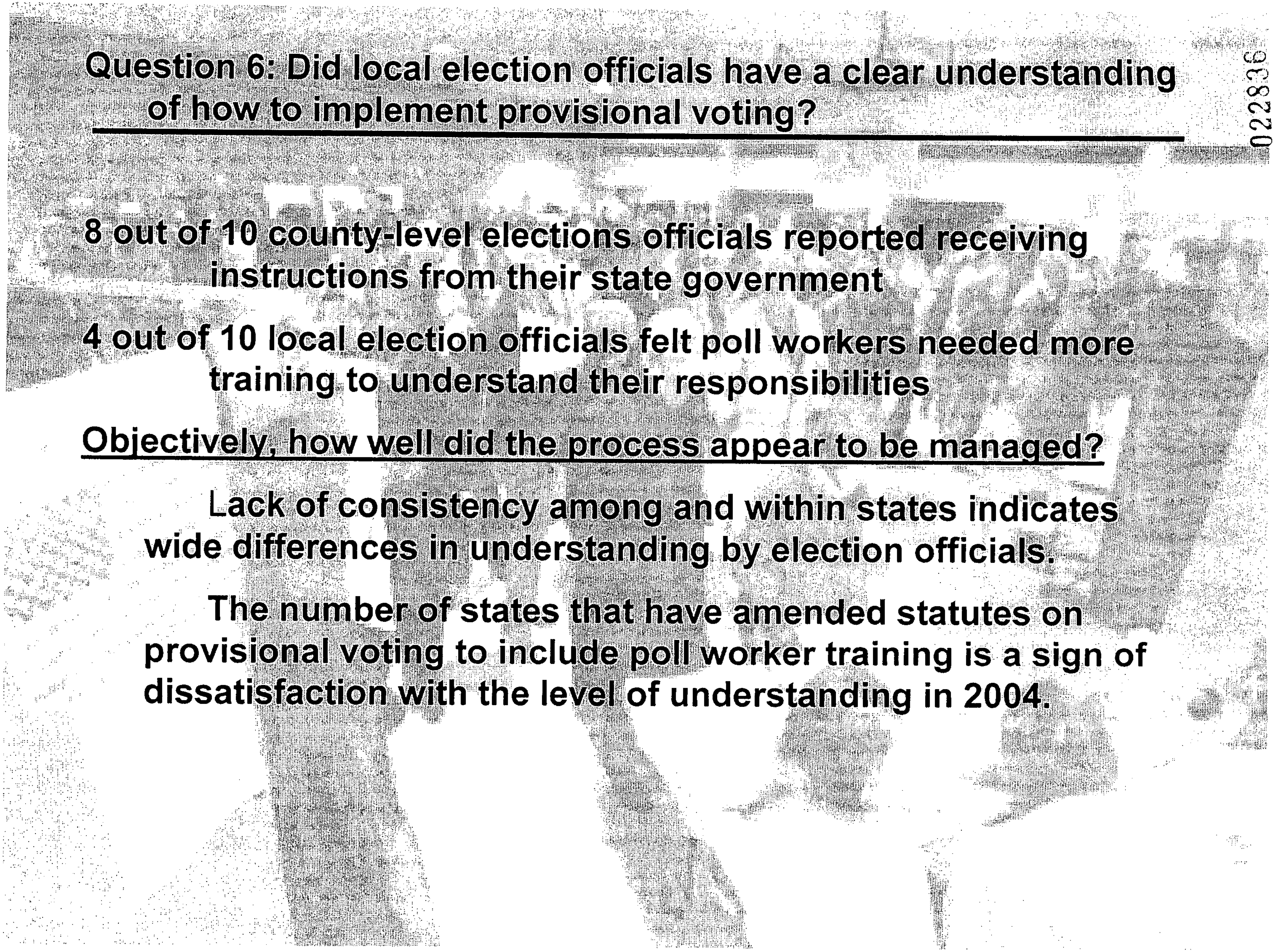
Little consistency existed among and within states.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

States that allowed out-of-precinct ballots counted 56% of the provisional ballots, 42% for in-precinct states.

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.



Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

Objectively, how well did the process appear to be managed?

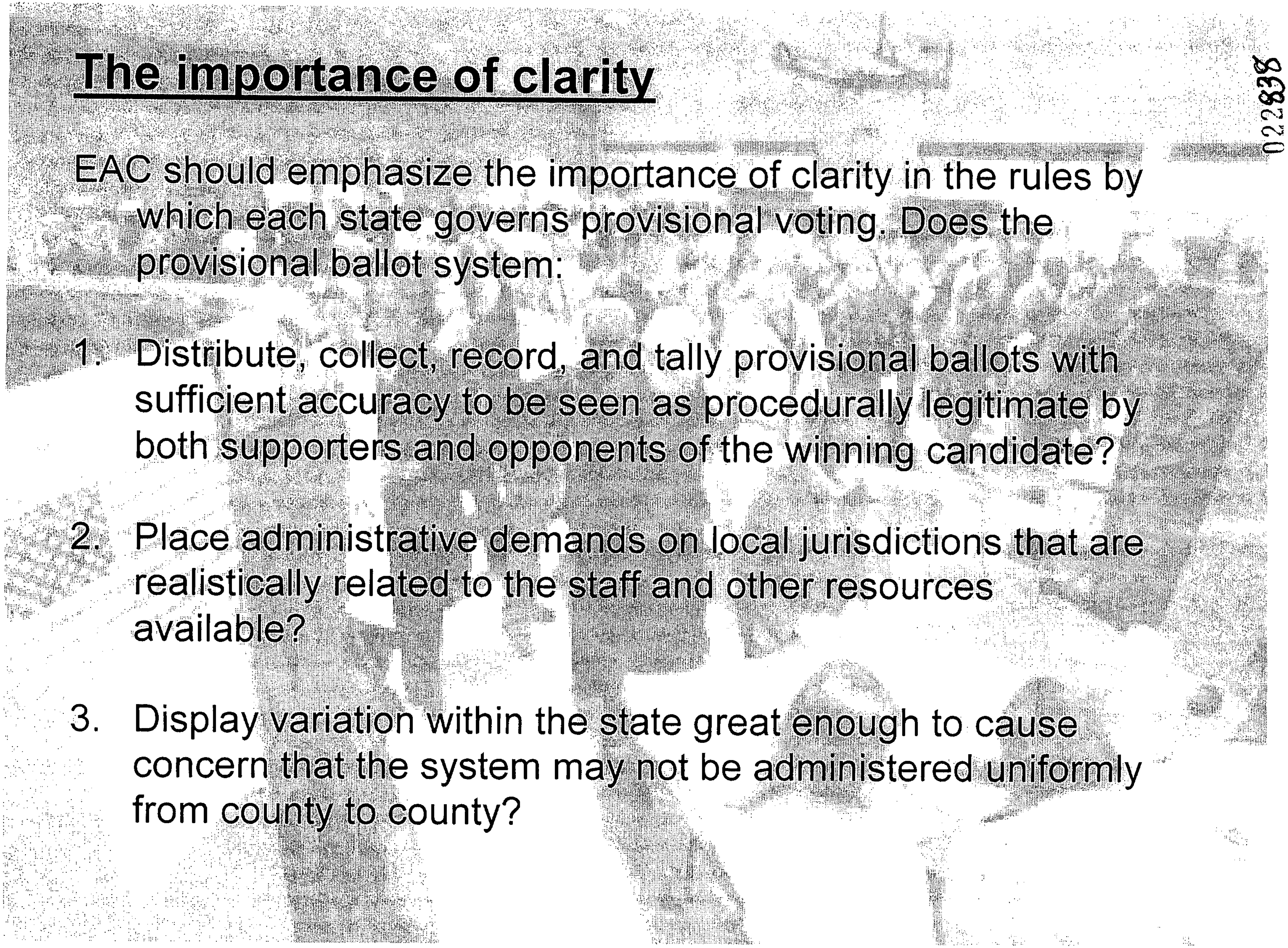
Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

RECOMMENDATIONS TO THE EAC

BEST PRACTICES

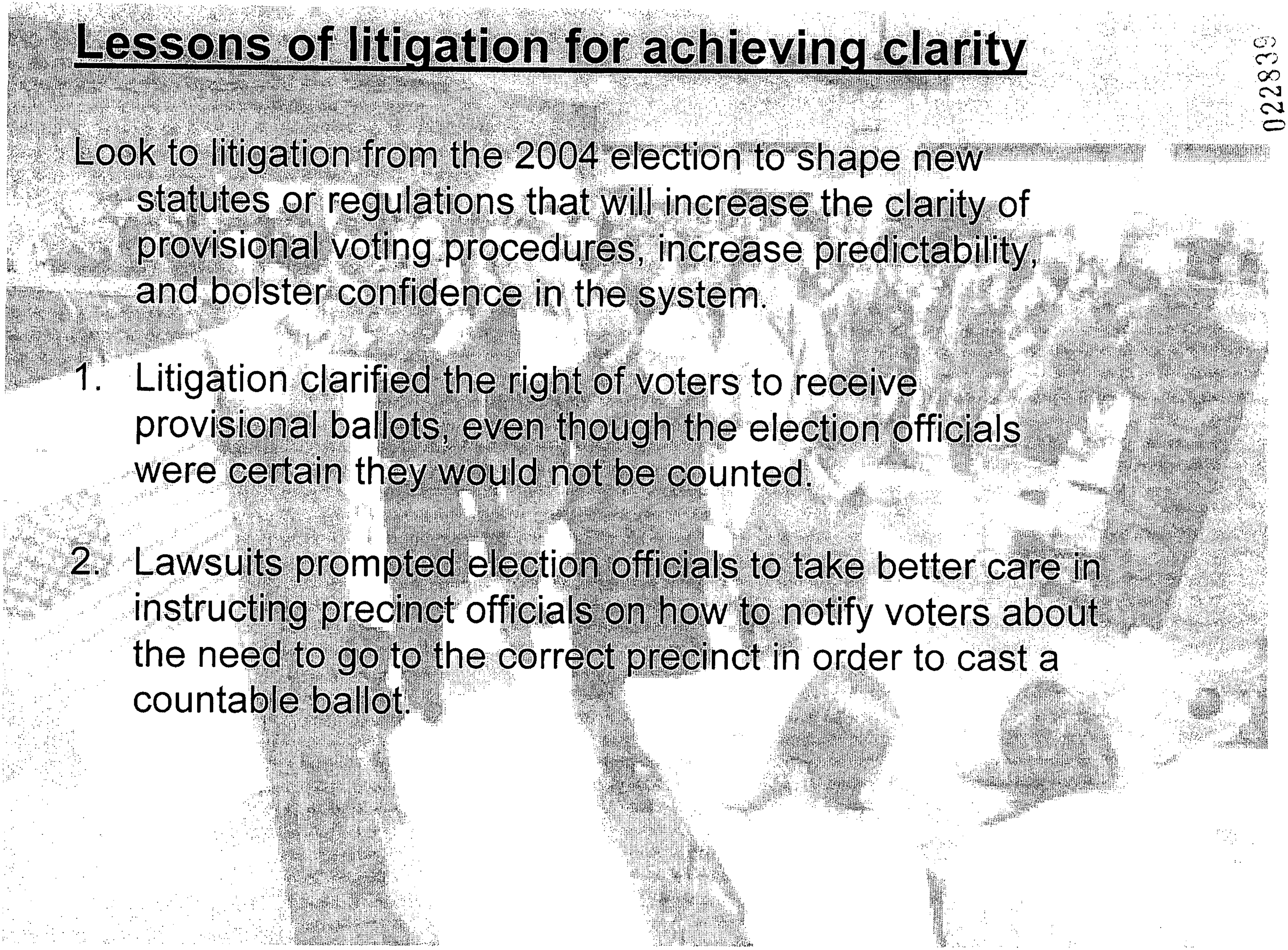
The importance of clarity



EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

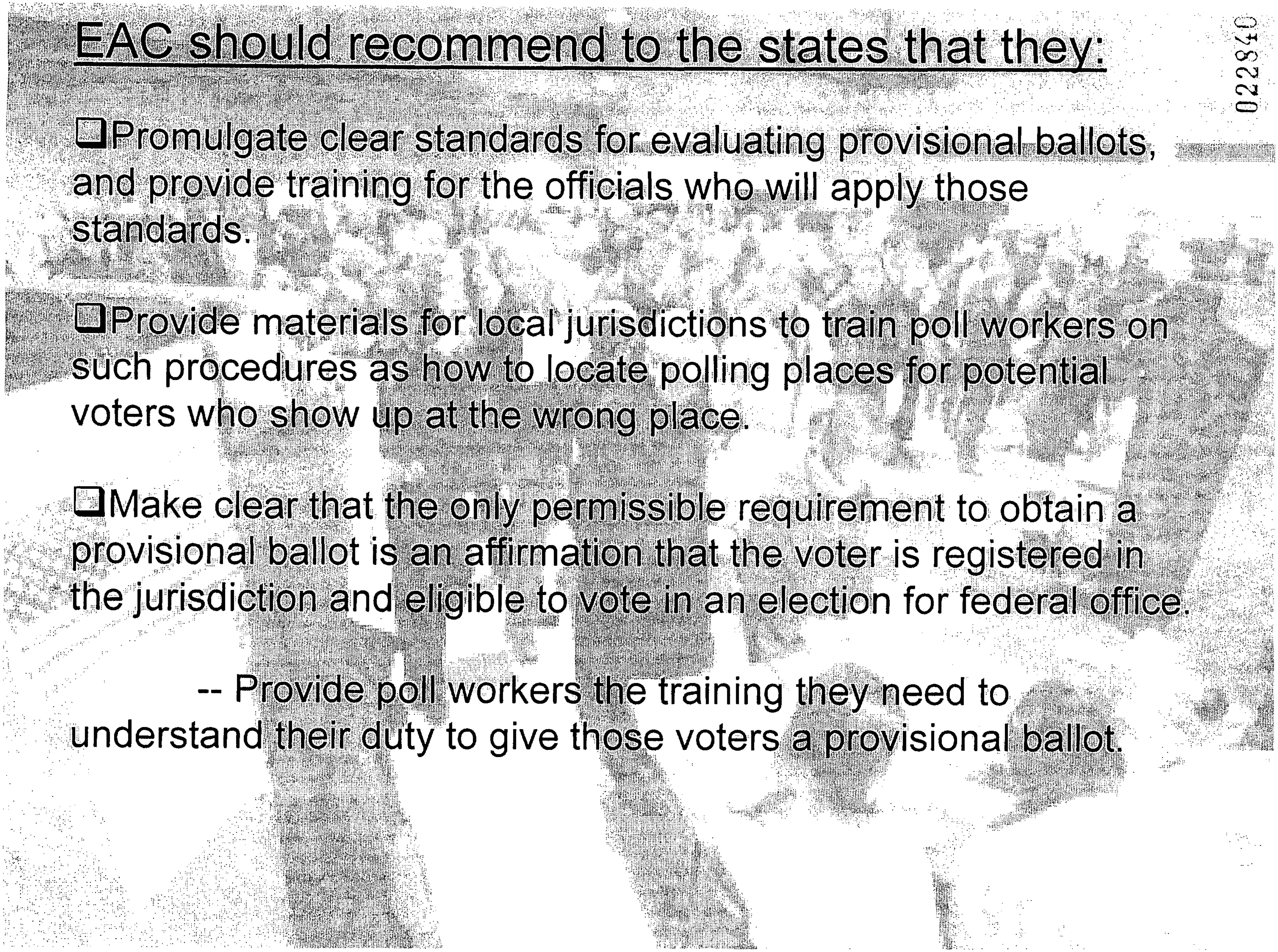
Lessons of litigation for achieving clarity



Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.

2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.



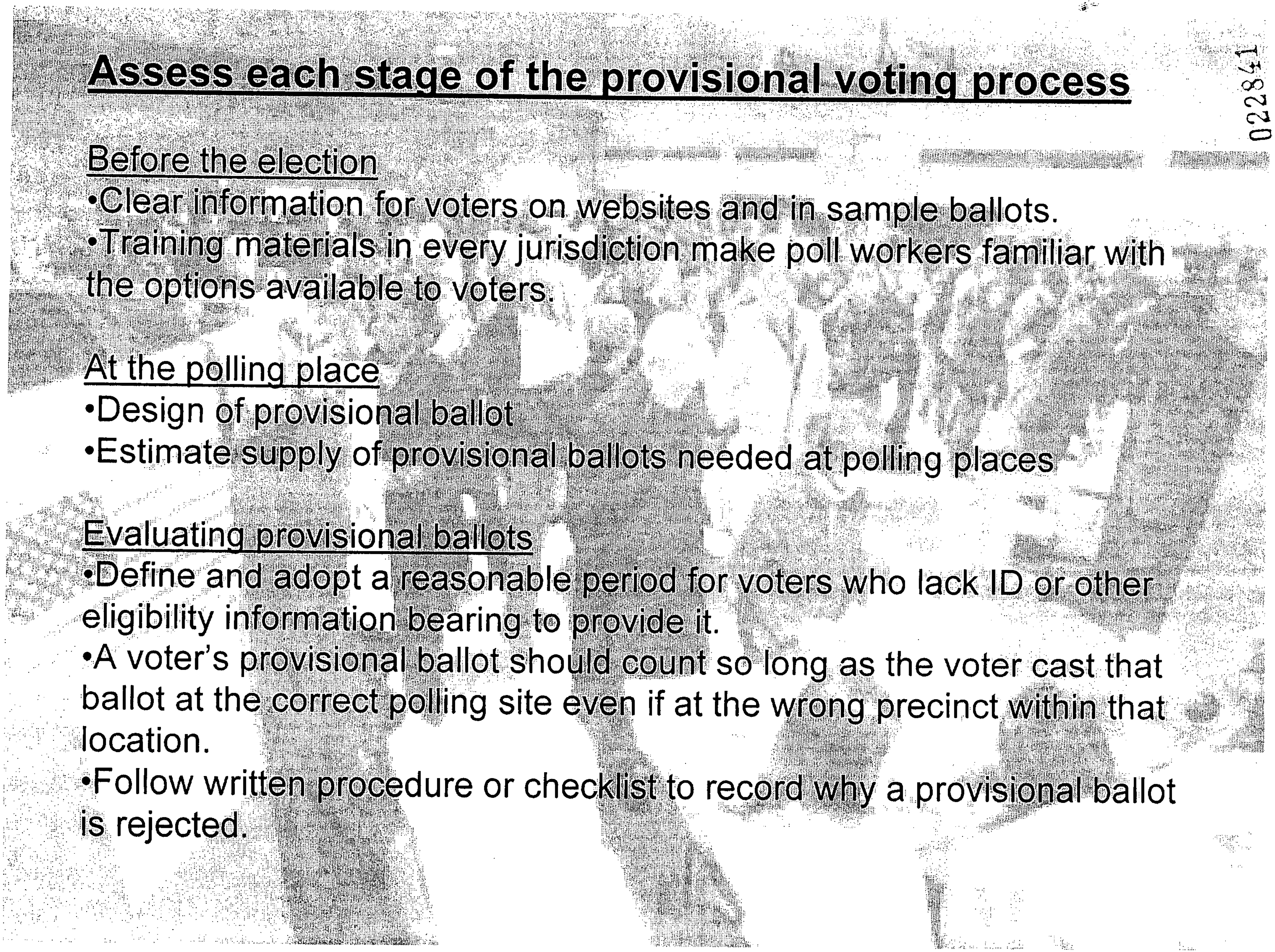
EAC should recommend to the states that they:

☐Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

☐Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

☐Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.



Assess each stage of the provisional voting process

Before the election

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

At the polling place

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

Evaluating provisional ballots

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
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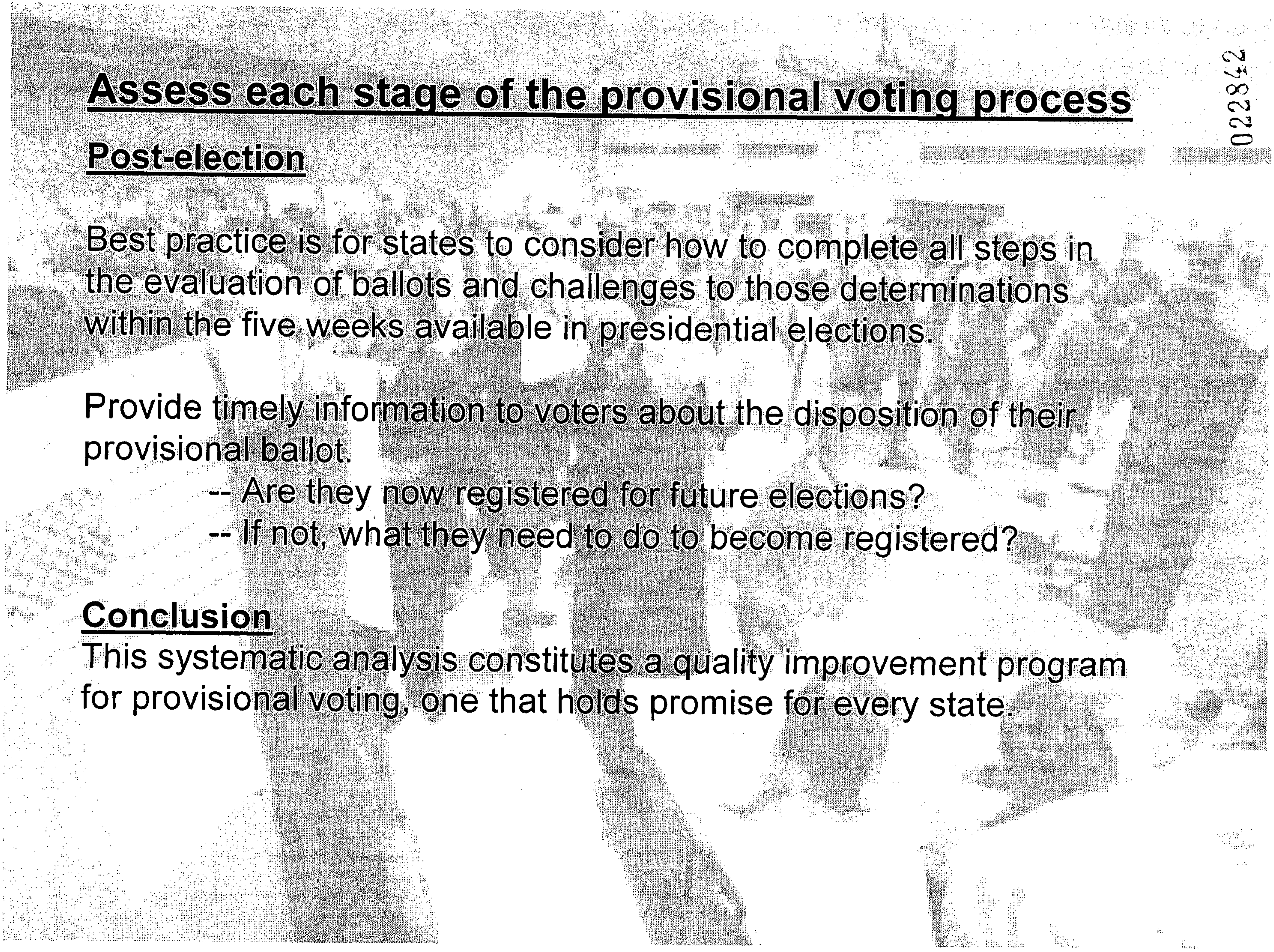
- Follow written procedure or checklist to record why a provisional ballot is rejected.



Assess each stage of the provisional voting process

Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

-- Are they now registered for future elections?
-- If not, what they need to do to become registered?

Conclusion

This systematic analysis constitutes a quality improvement program for provisional voting, one that holds promise for every state.

Briefing for

U. S. Election Assistance Commission Advisory and Standards Board

DISCUSSION AND QUESTIONS

May 2006

Briefing for
U. S. Election Assistance Commission
Standards Board

May 23 , 2006

Provisional Voting

[illegible] Recommendations

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EAGLETON INSTITUTE OF POLITICS

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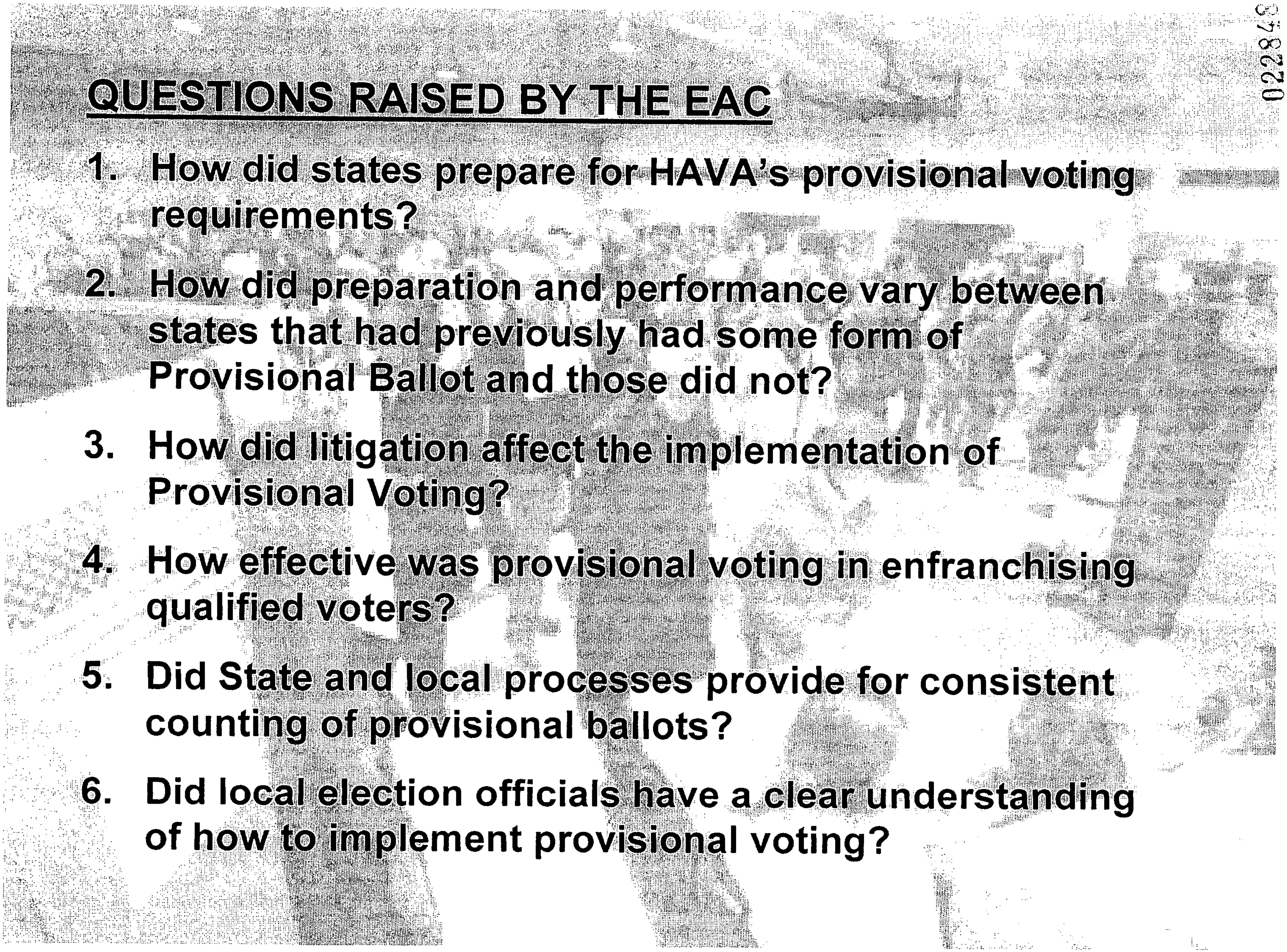
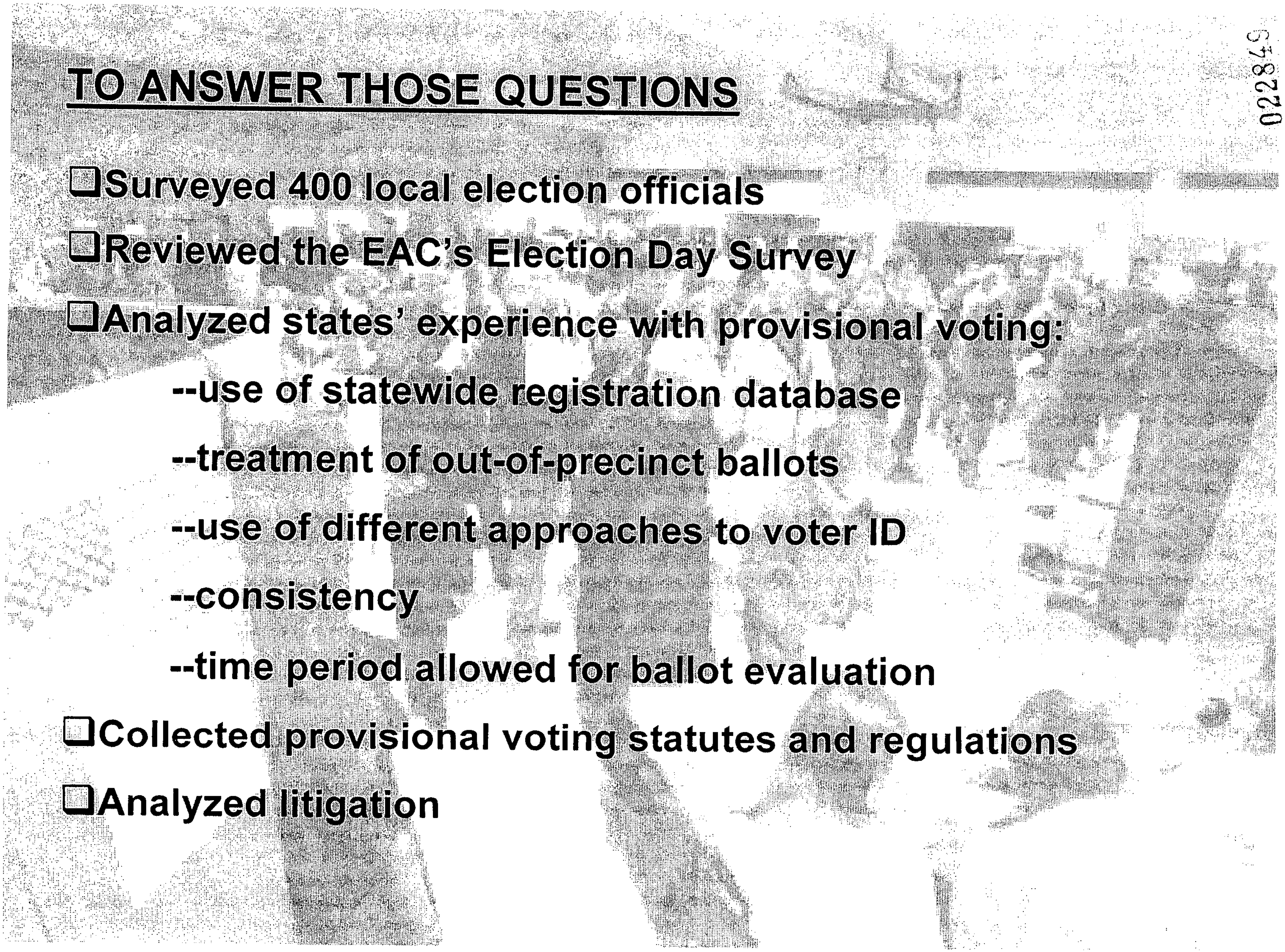


QUESTIONS RAISED BY THE EAC

1. How did states prepare for HAVA's provisional voting requirements?
2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?
3. How did litigation affect the implementation of Provisional Voting?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did State and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?



TO ANSWER THOSE QUESTIONS

☐Surveyed 400 local election officials

☐Reviewed the EAC's Election Day Survey

☐Analyzed states' experience with provisional voting:

--use of statewide registration database

--treatment of out-of-precinct ballots

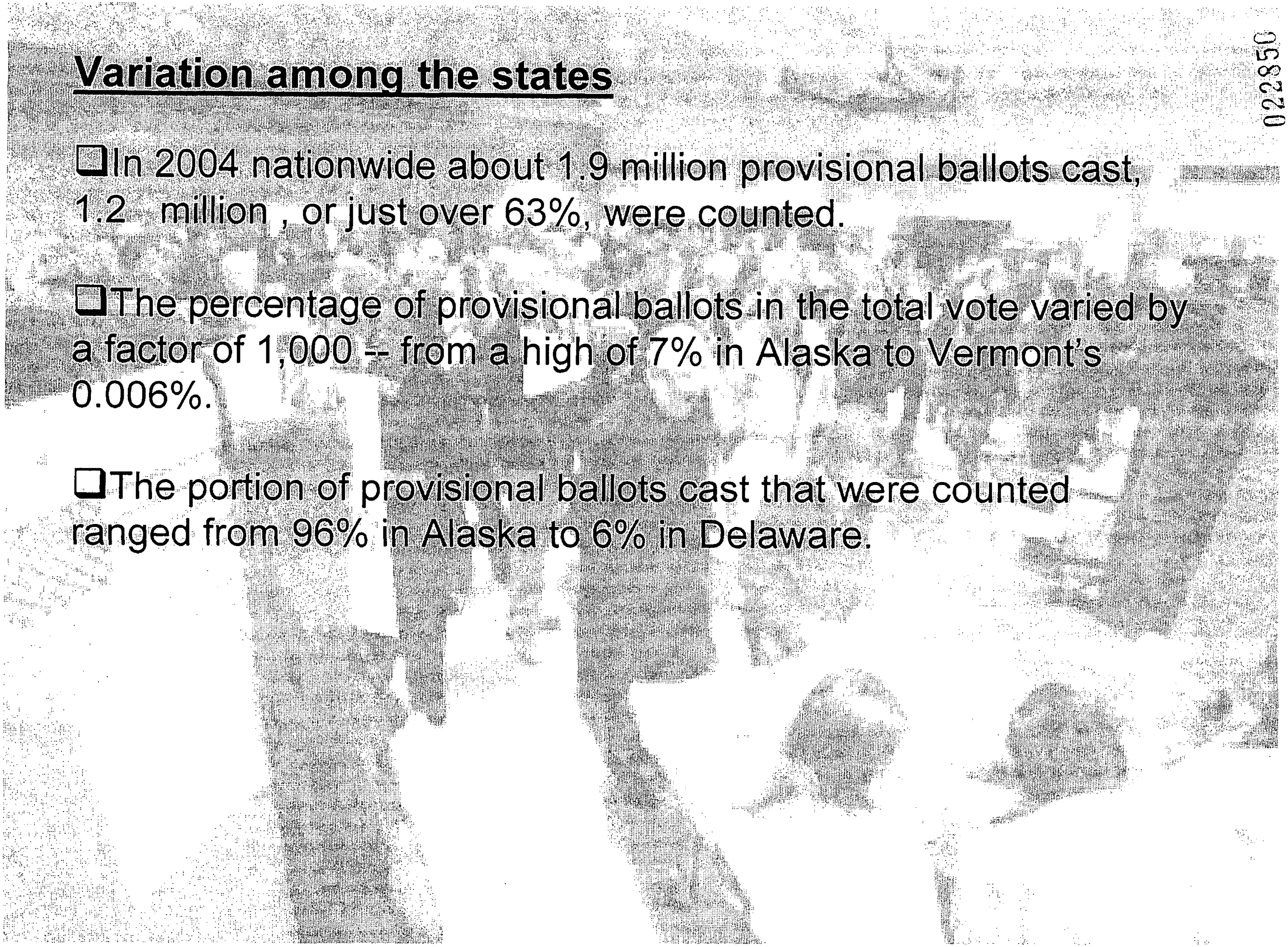
--use of different approaches to voter ID

--consistency

--time period allowed for ballot evaluation

☐Collected provisional voting statutes and regulations

☐Analyzed litigation

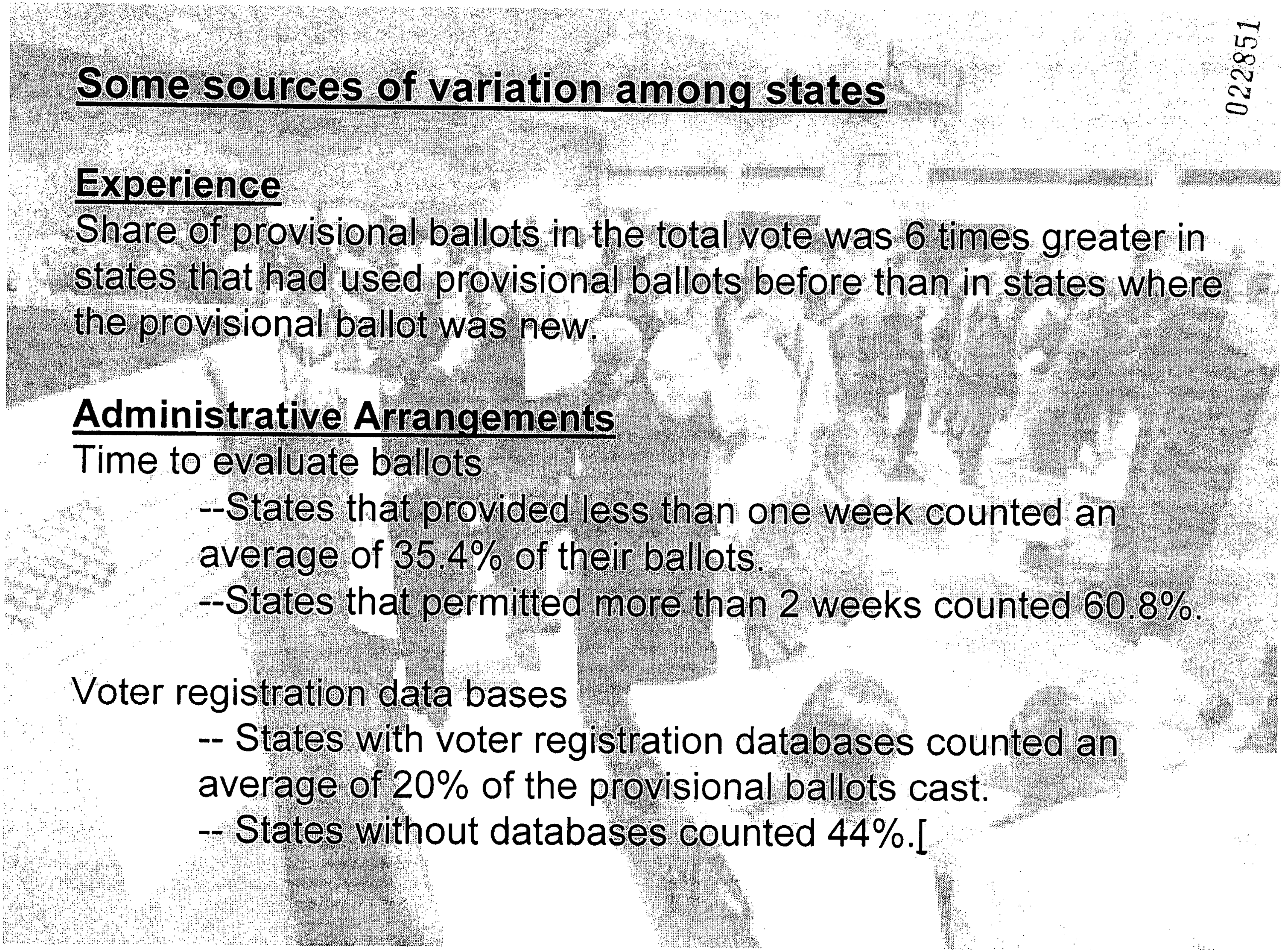


Variation among the states

- In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million , or just over 63%, were counted.

- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.

- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.



Some sources of variation among states

Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

Administrative Arrangements

Time to evaluate ballots

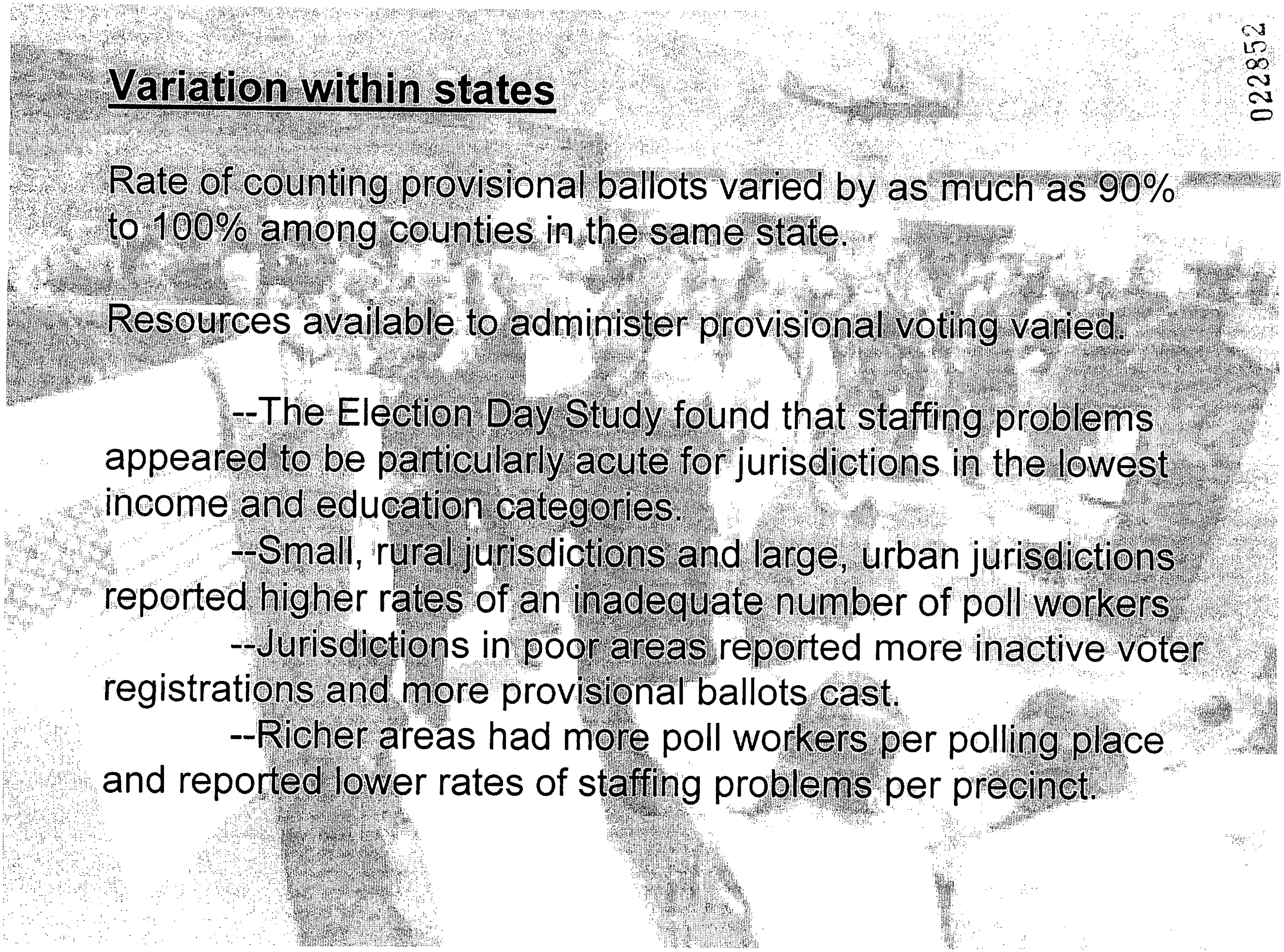
--States that provided less than one week counted an average of 35.4% of their ballots.

--States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

-- States with voter registration databases counted an average of 20% of the provisional ballots cast.

-- States without databases counted 44%.[



Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

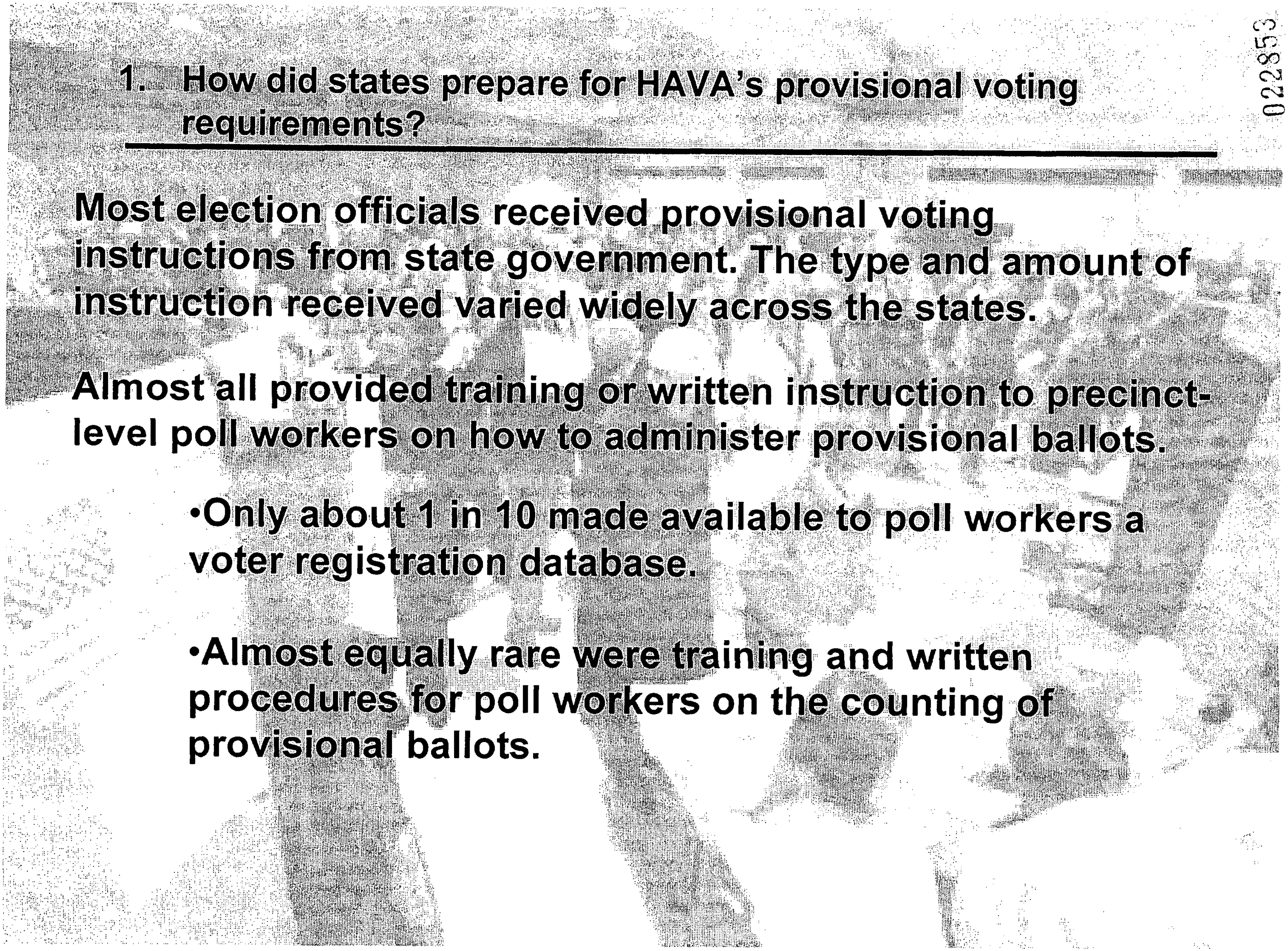
Resources available to administer provisional voting varied.

--The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

--Small, rural jurisdictions and large, urban jurisdictions reported higher rates of an inadequate number of poll workers

--Jurisdictions in poor areas reported more inactive voter registrations and more provisional ballots cast.

--Richer areas had more poll workers per polling place and reported lower rates of staffing problems per precinct.



1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- Only about 1 in 10 made available to poll workers a voter registration database.
- Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

Local election officials in the "old" states felt more confident.

18 states were new to provisional voting; 25 others had experience.

"New" state officials felt:

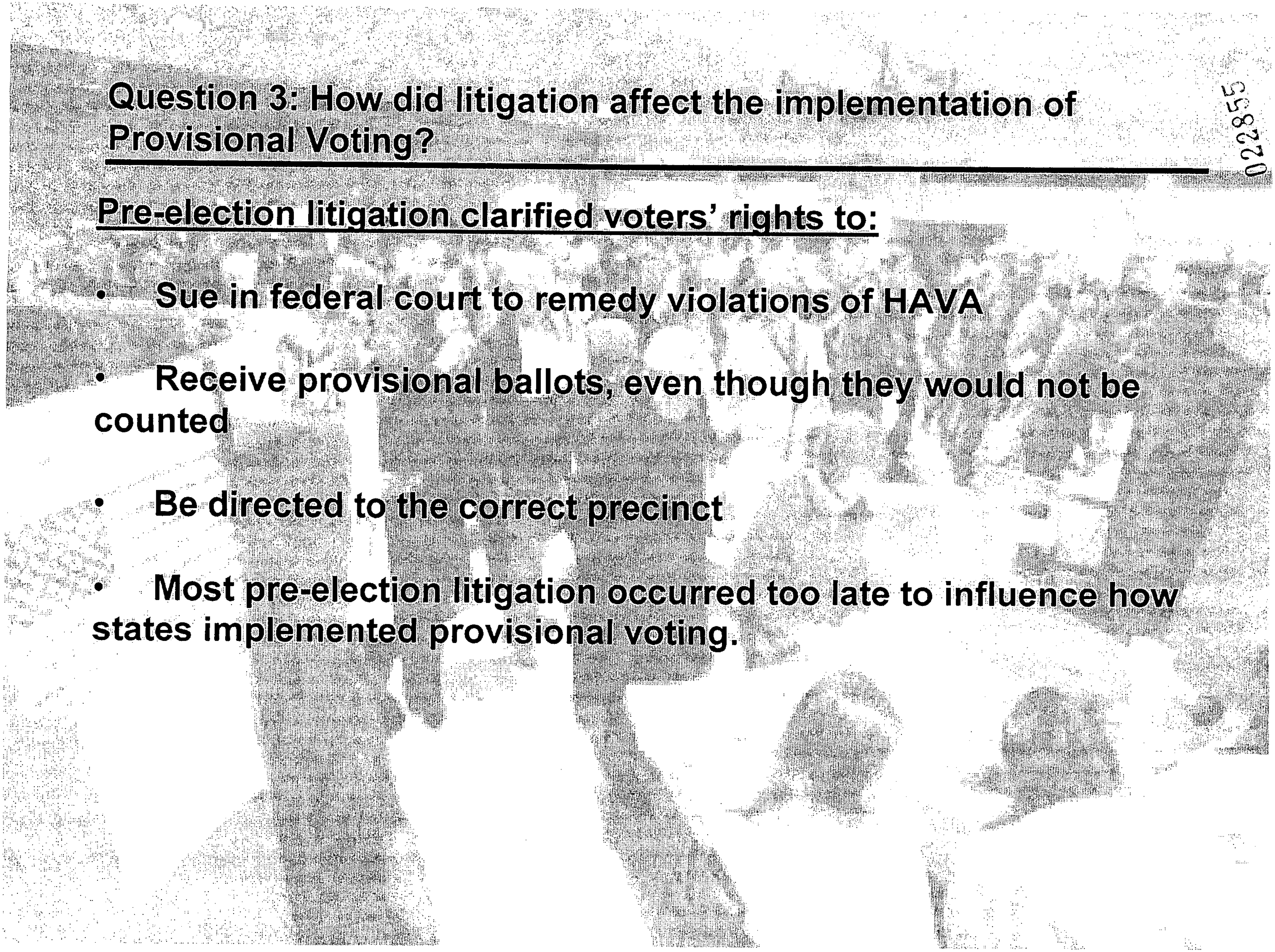
-- Voters did not receive enough information about where to cast a provisional ballot in order to be counted.

-- More funding was needed to educate voters about their rights to cast a provisional ballot.

Provisional ballots in "old states" : more than 2% of the total vote, 4 times the proportion in "new" states.

Counting provisional ballots in the final vote, the "old" states averaged 58% nearly double the average (33%) in "new" states.

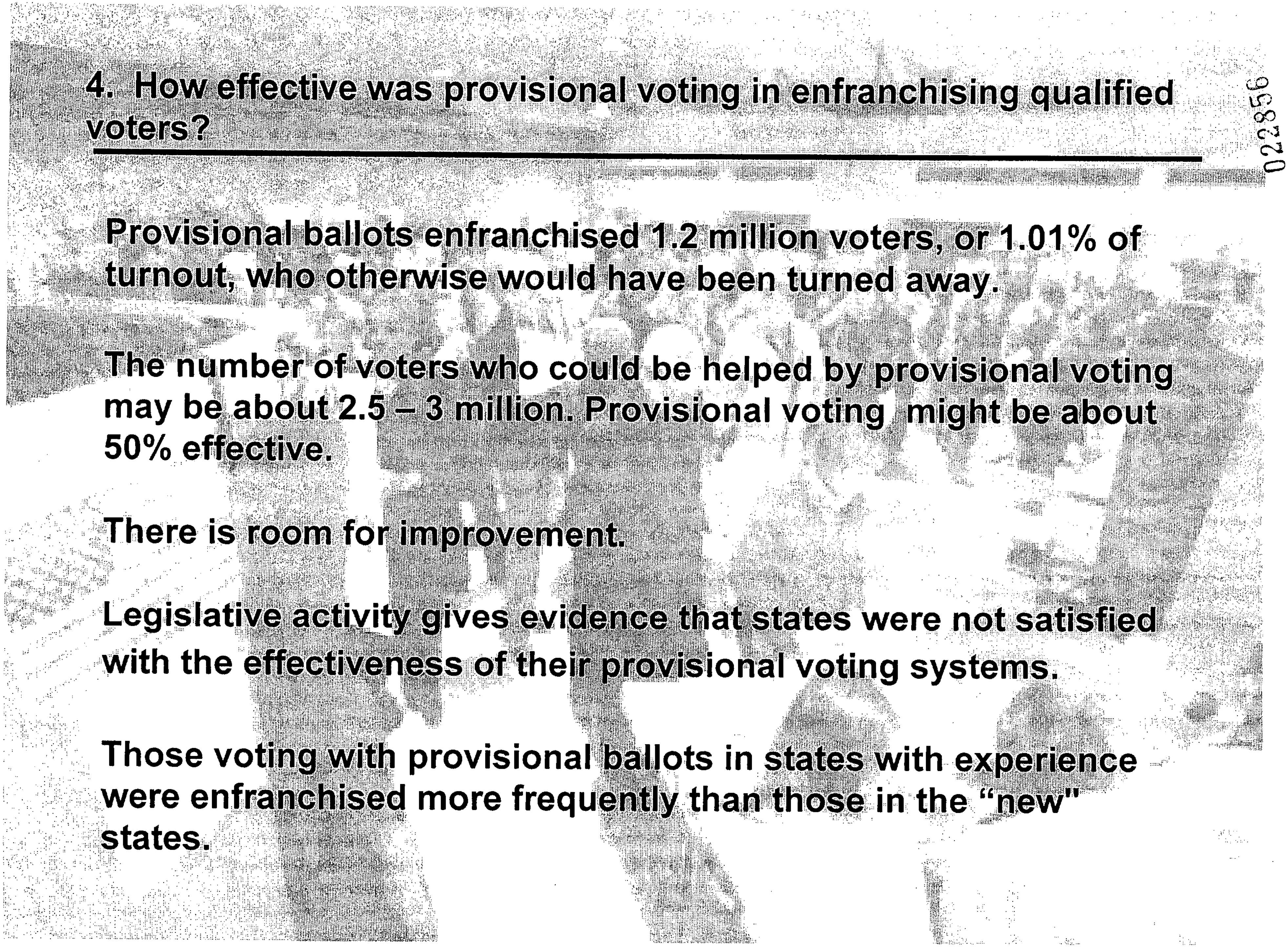
Question 3: How did litigation affect the implementation of Provisional Voting?



Pre-election litigation clarified voters' rights to:

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.

4. How effective was provisional voting in enfranchising qualified voters?



Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

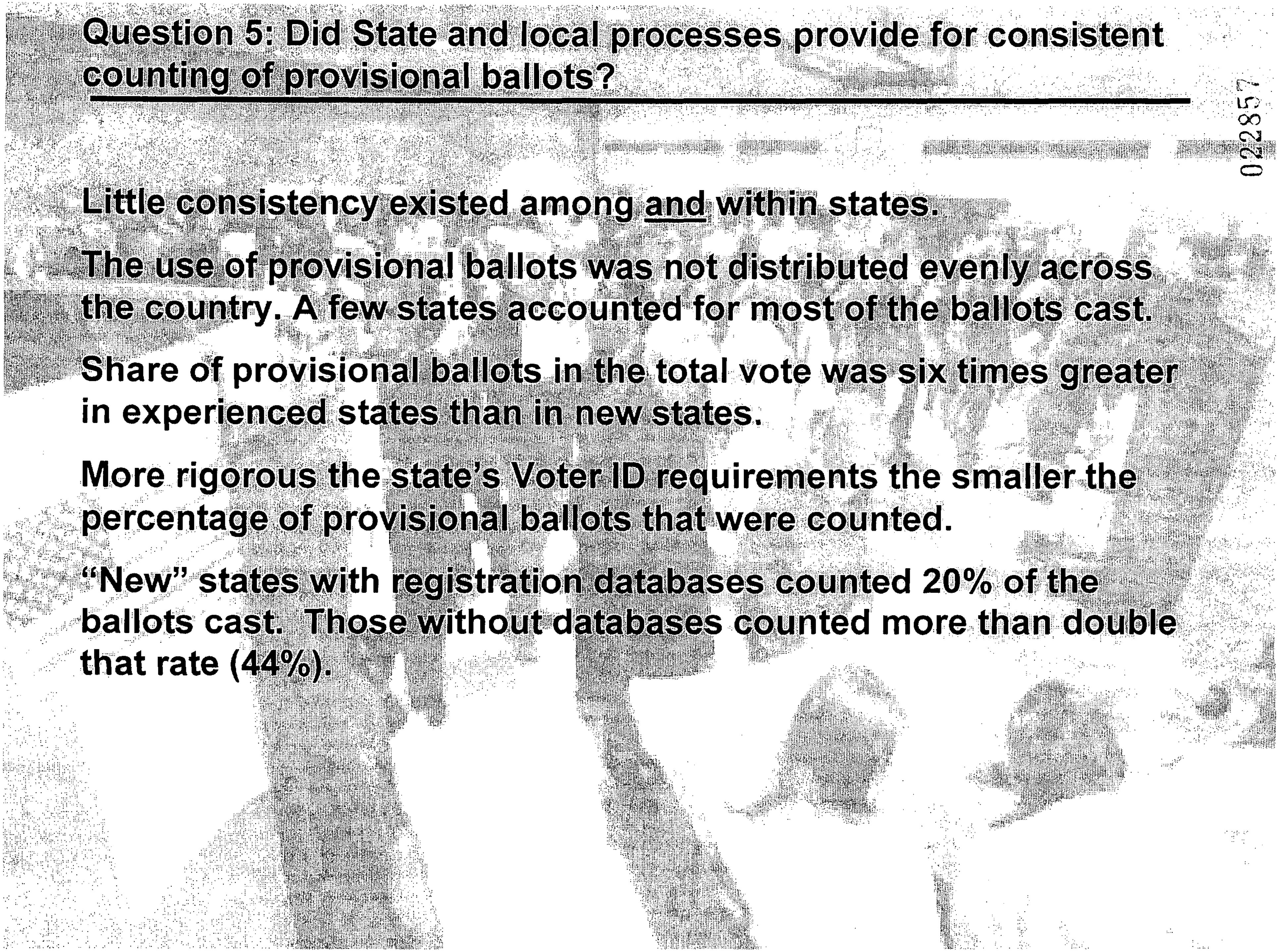
The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the “new" states.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?



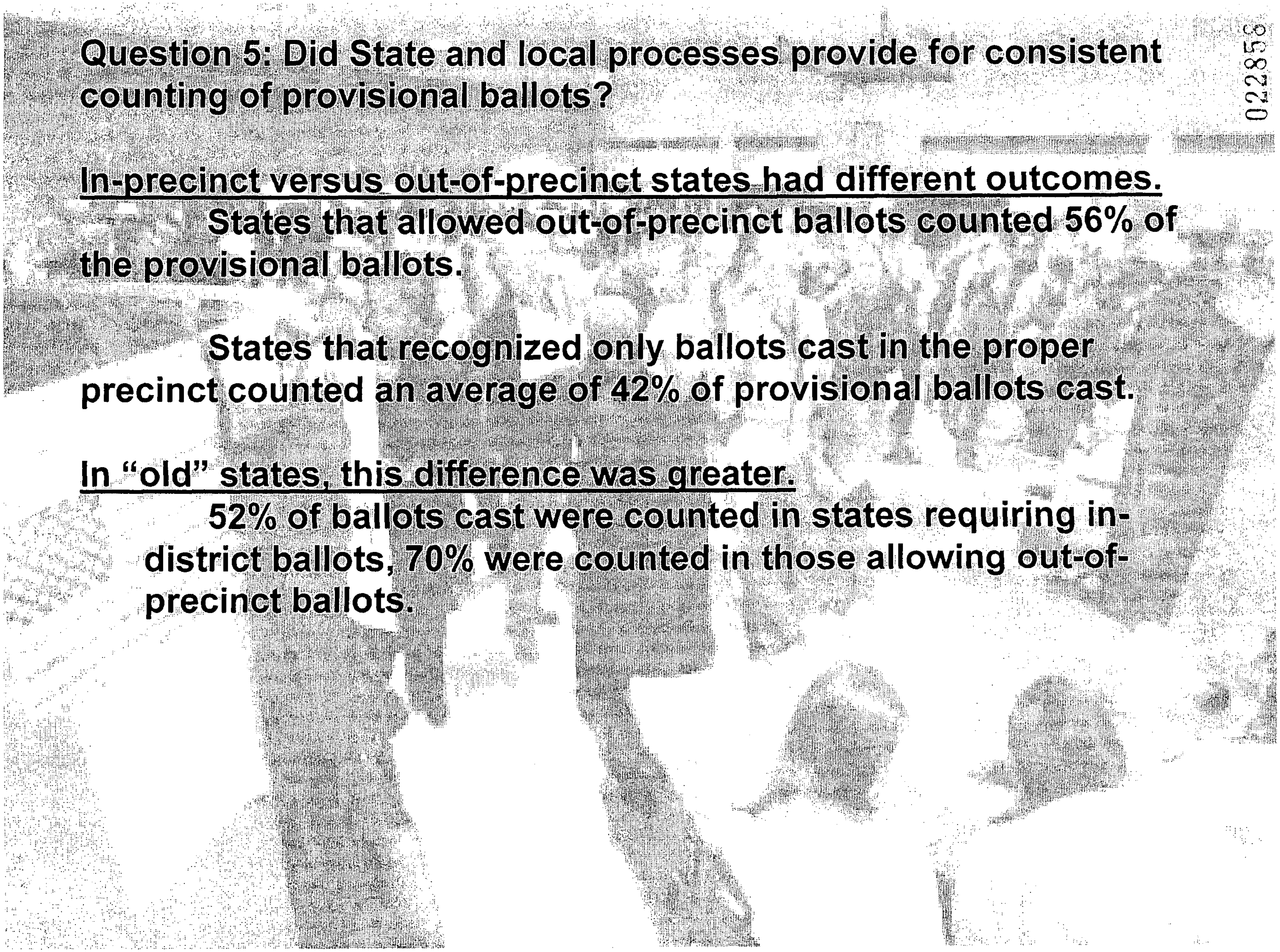
Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the state's Voter ID requirements the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).



Question 5: Did State and local processes provide for consistent counting of provisional ballots?

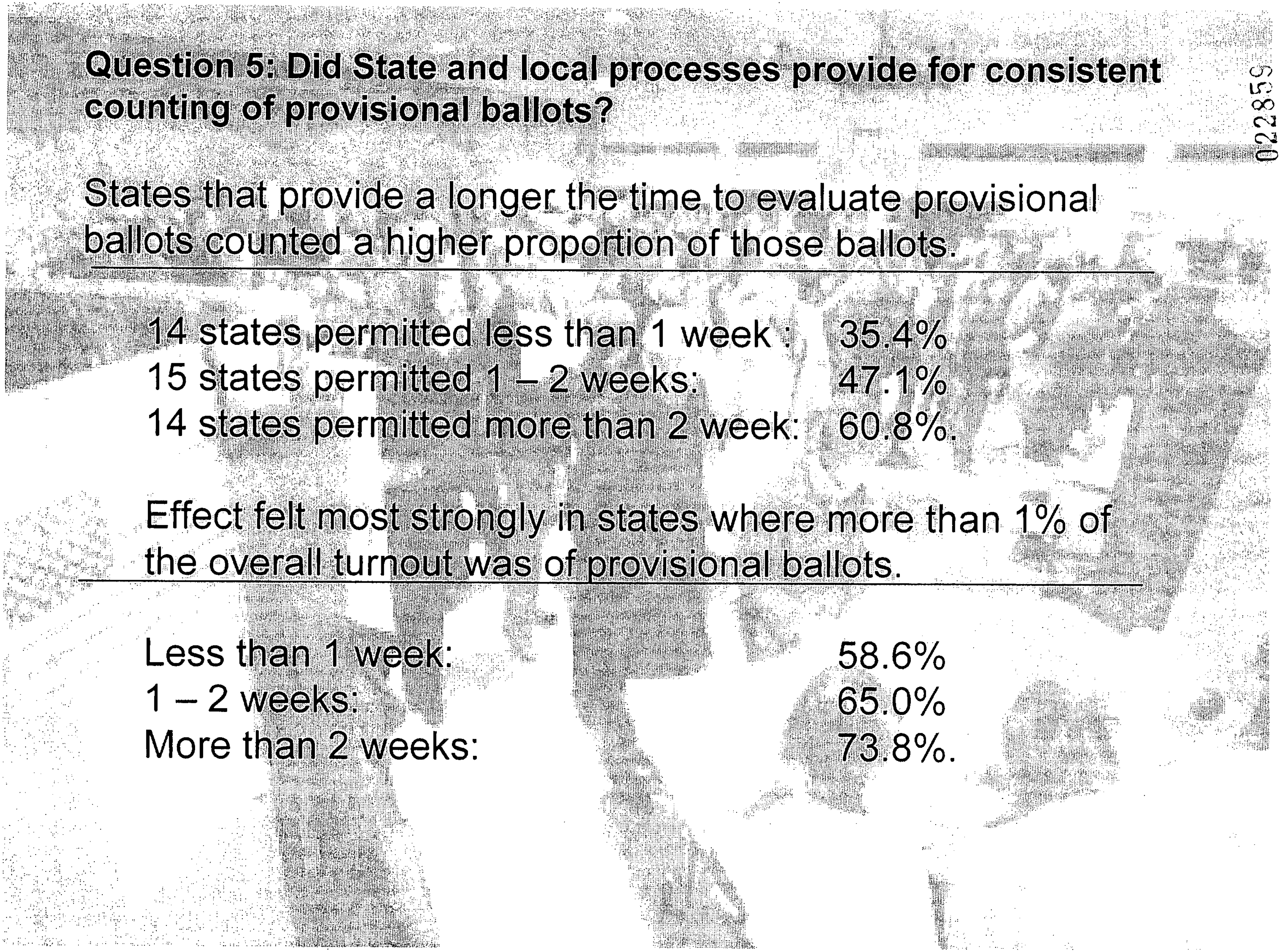
<u>In-precinct versus out-of-precinct states had different outcomes.</u>

States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

<u>In "old" states, this difference was greater.</u>

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.



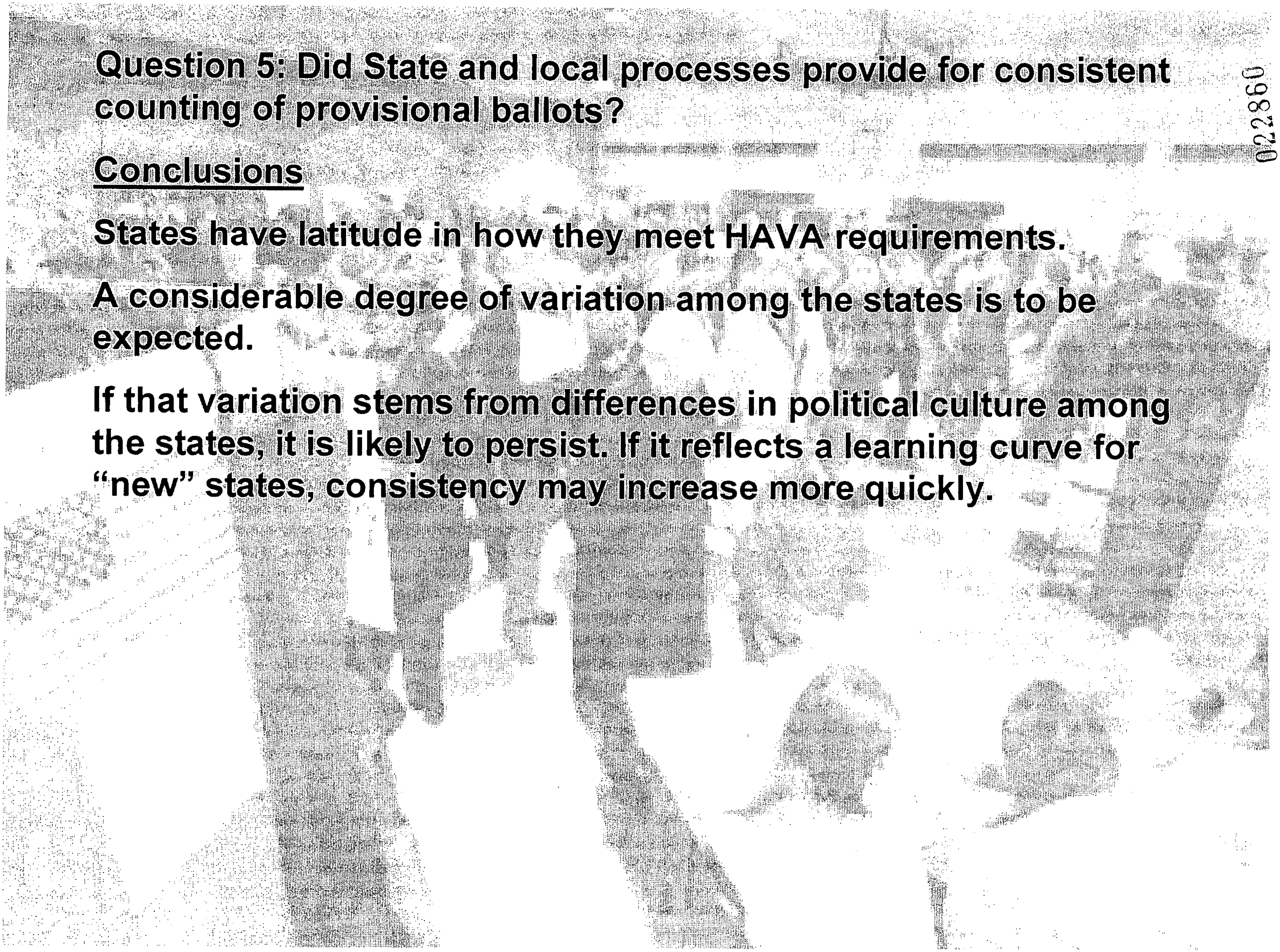
Question 5: Did State and local processes provide for consistent counting of provisional ballots?

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

14 states permitted less than 1 week : 35.4%
15 states permitted 1 – 2 weeks: 47.1%
14 states permitted more than 2 week: 60.8%.

Effect felt most strongly in states where more than 1% of the overall turnout was of provisional ballots.

Less than 1 week: 58.6%
1 – 2 weeks: 65.0%
More than 2 weeks: 73.8%.



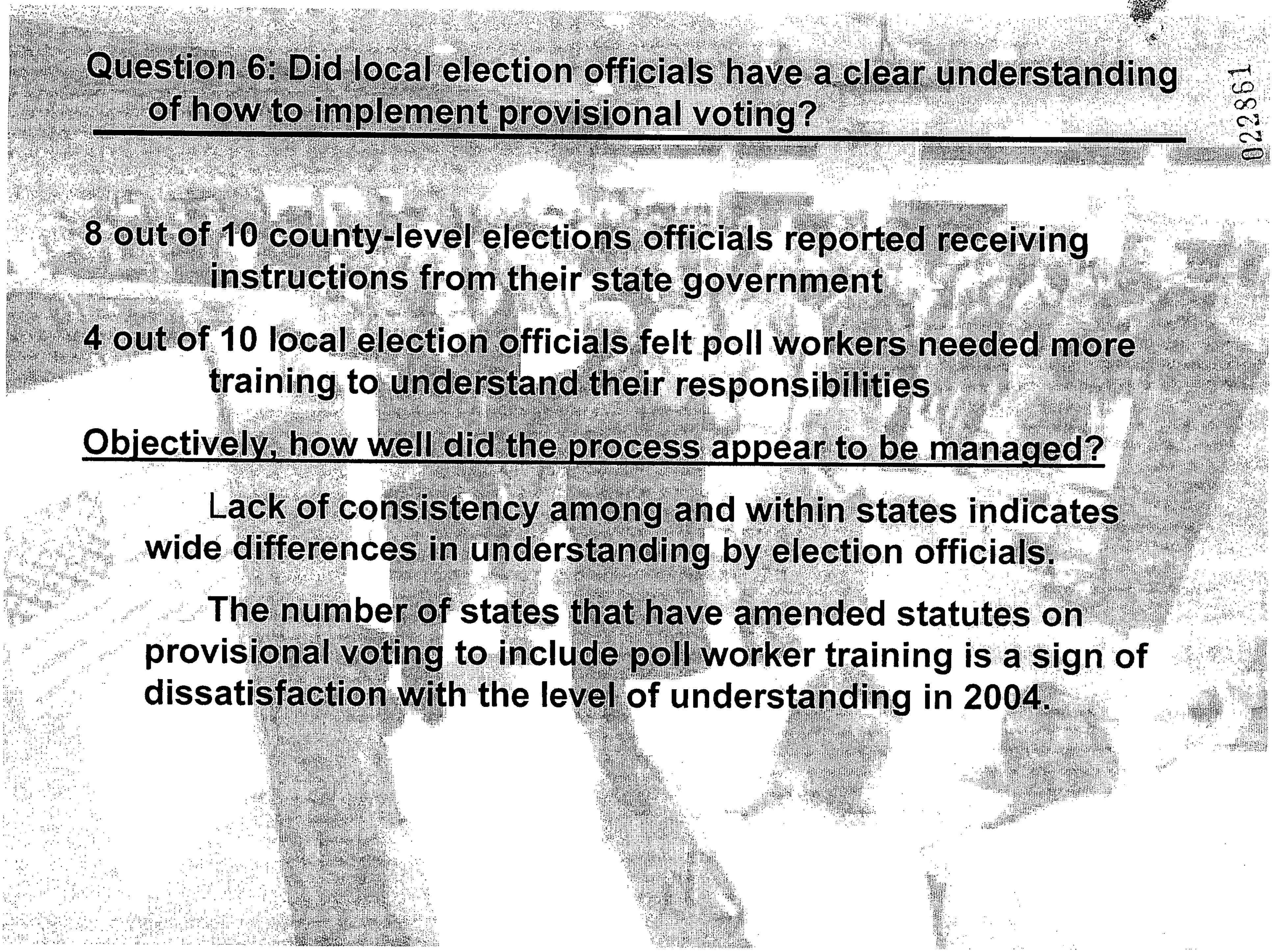
Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Conclusions

States have latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.



Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

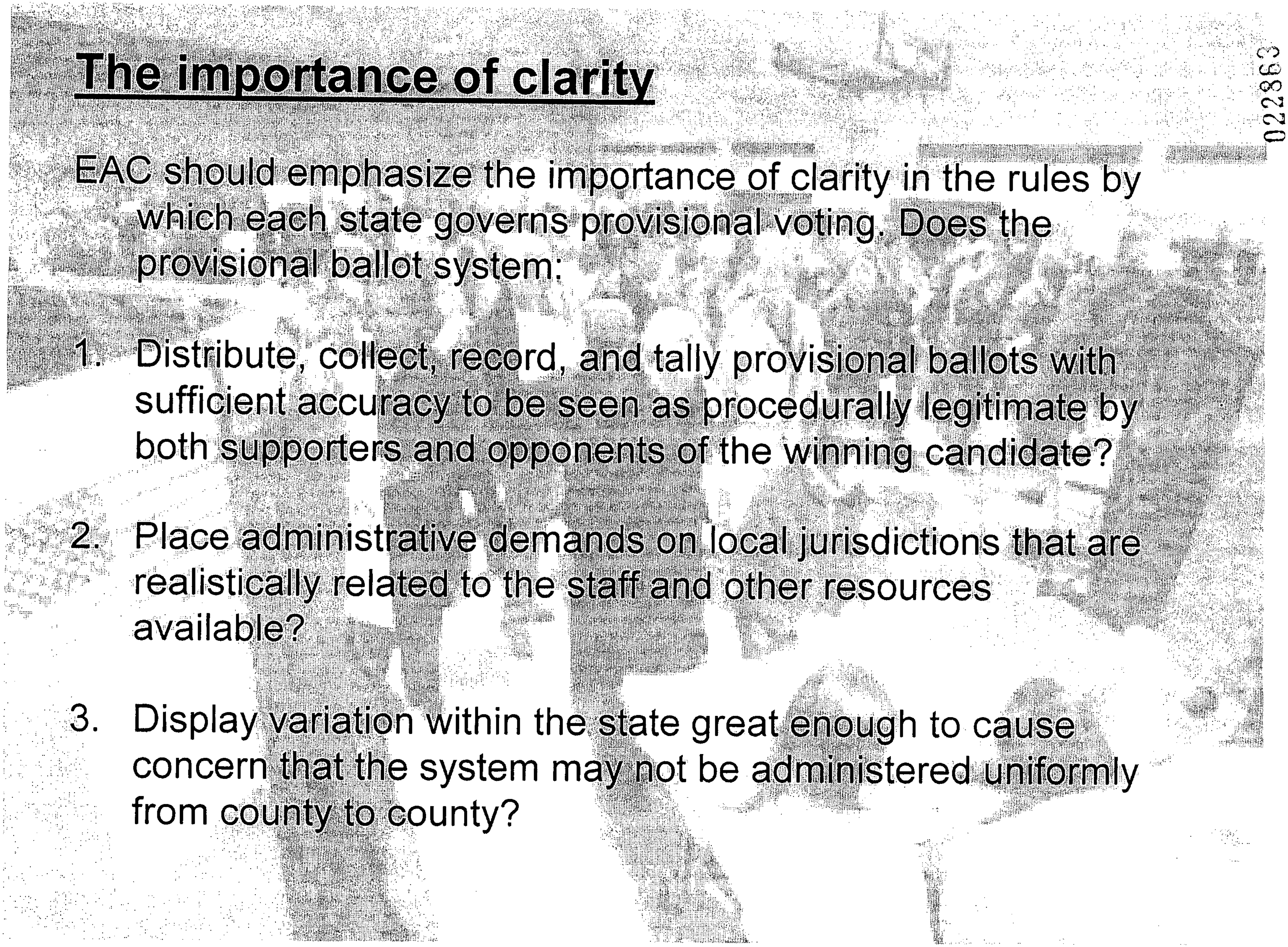
Objectively, how well did the process appear to be managed?

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

RECOMMENDATIONS TO THE EAC

BEST PRACTICES



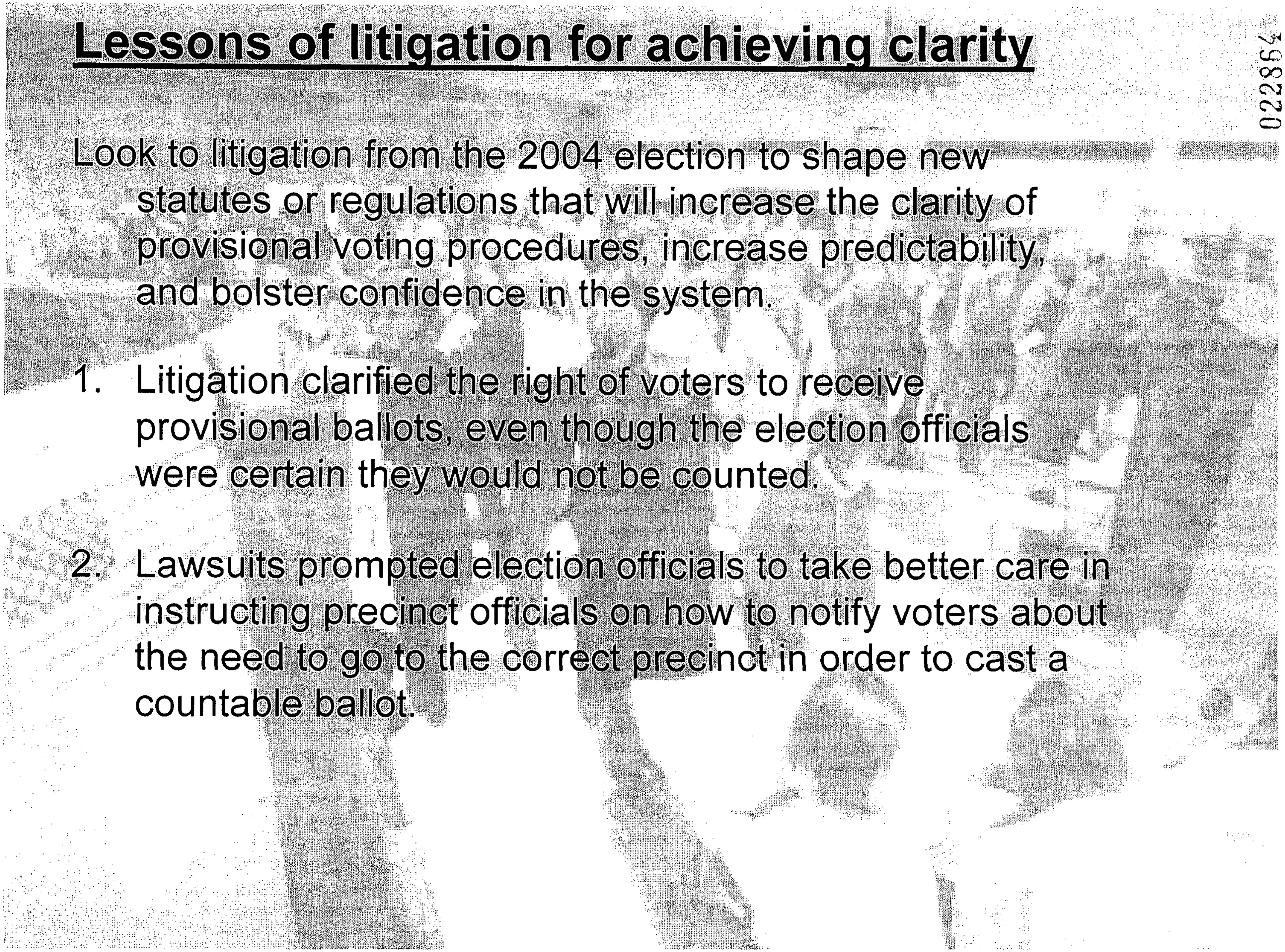
The importance of clarity

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?

2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?

3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

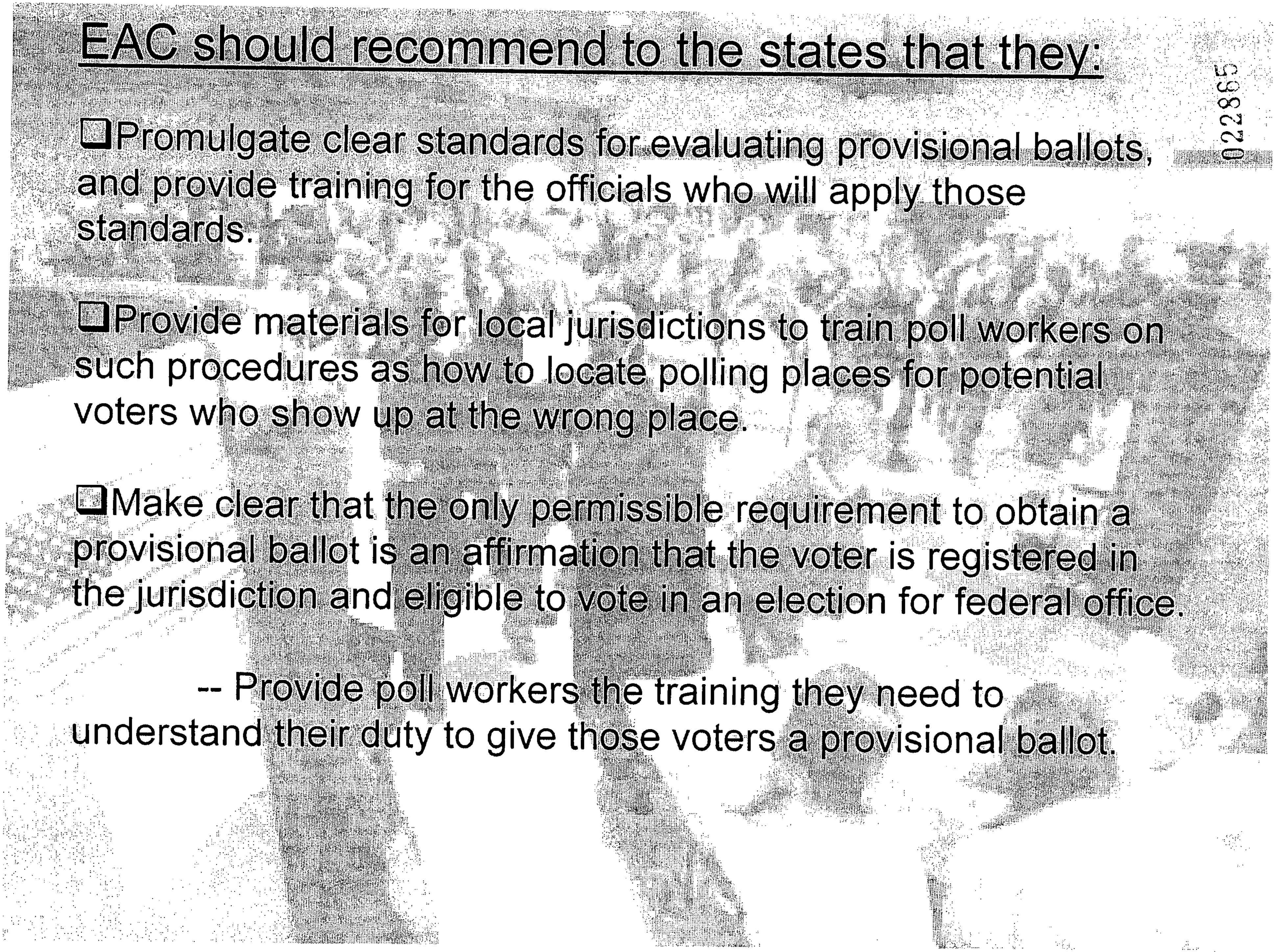


Lessons of litigation for achieving clarity

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.

2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.



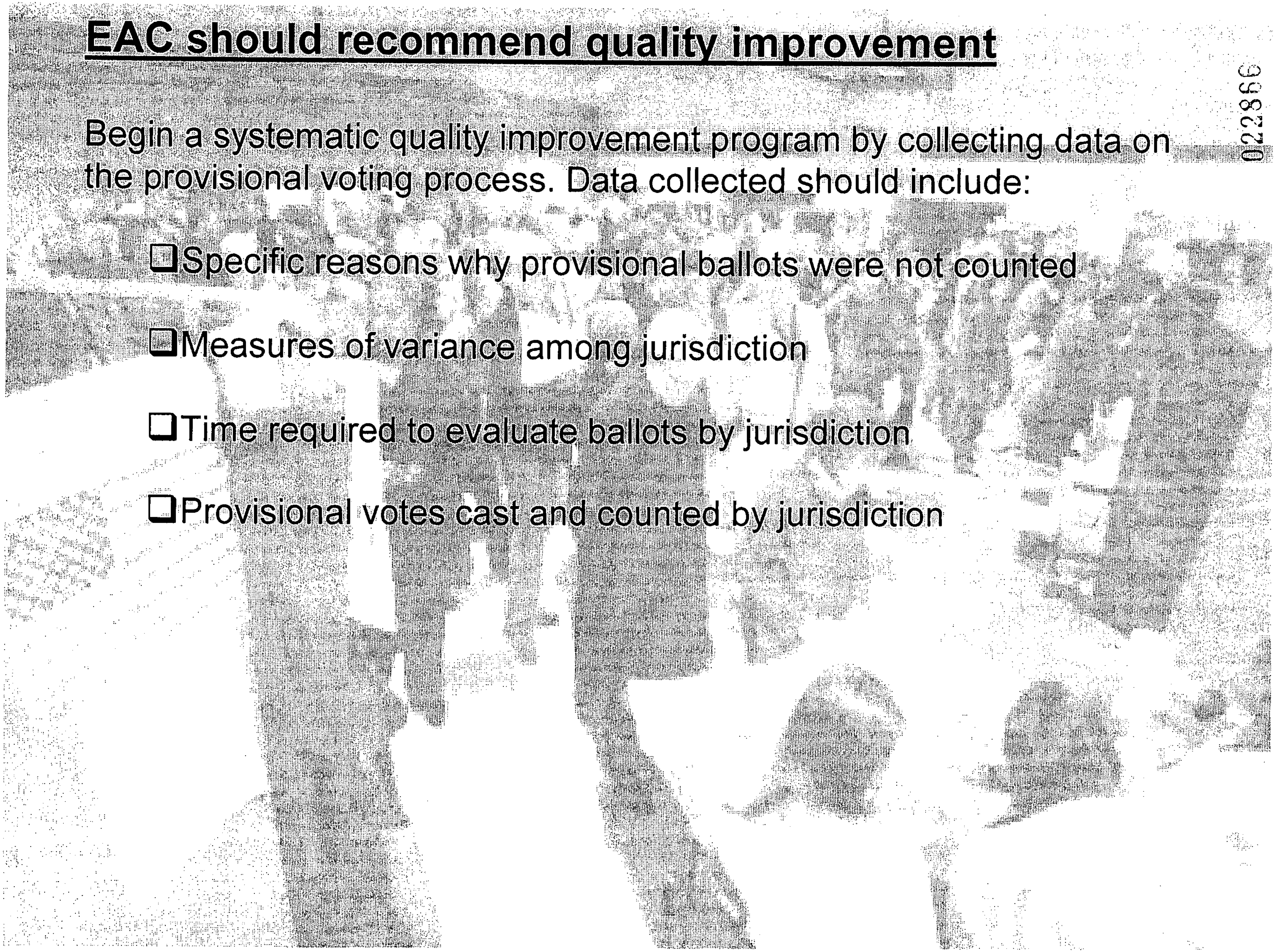
EAC should recommend to the states that they:

❑Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

❑Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

❑Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

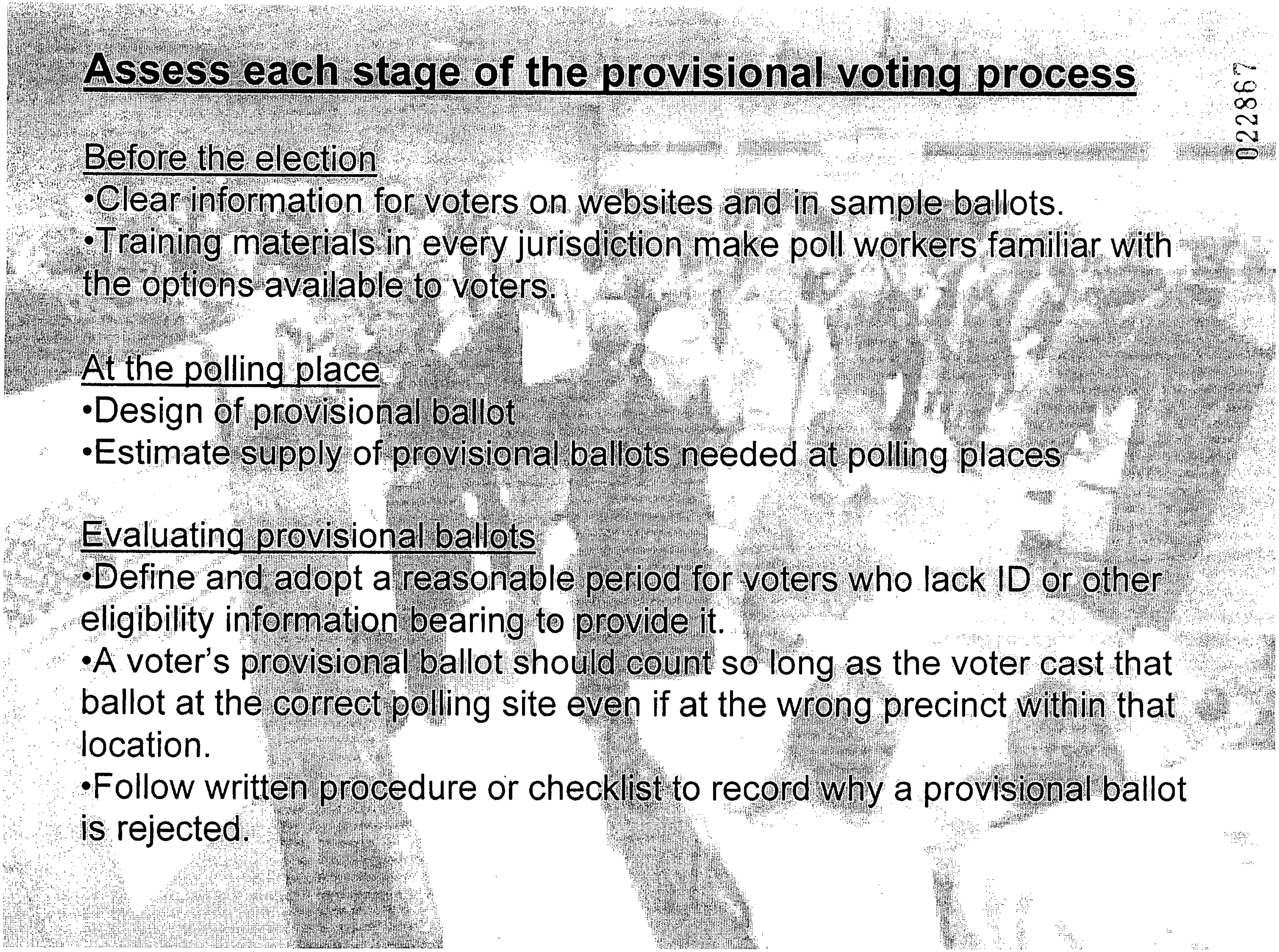
-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.



EAC should recommend quality improvement

Begin a systematic quality improvement program by collecting data on the provisional voting process. Data collected should include:

- ☐Specific reasons why provisional ballots were not counted
- ☐Measures of variance among jurisdiction
- ☐Time required to evaluate ballots by jurisdiction
- ☐Provisional votes cast and counted by jurisdiction



Assess each stage of the provisional voting process

Before the election

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

At the polling place

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

Evaluating provisional ballots

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
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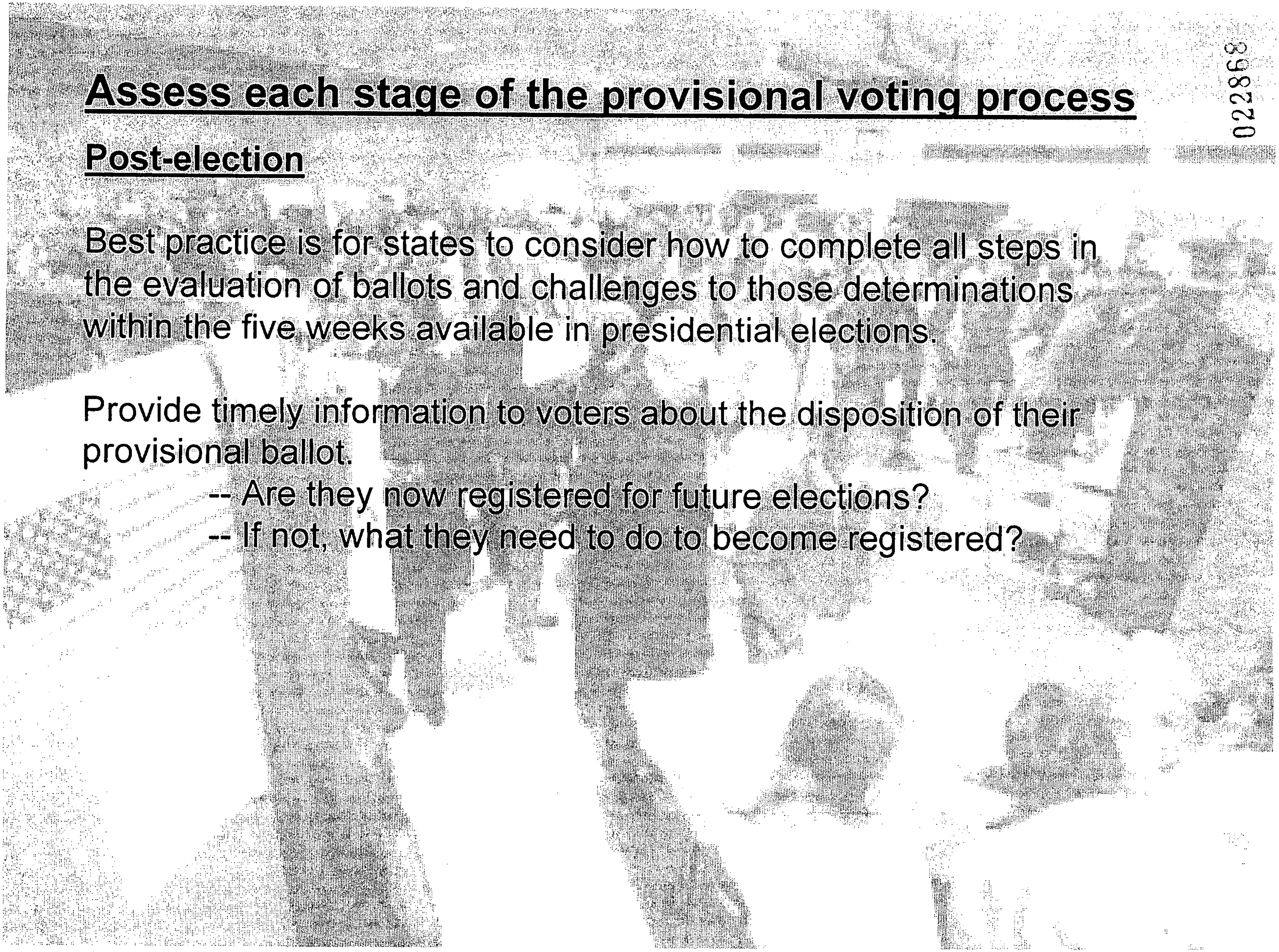
- Follow written procedure or checklist to record why a provisional ballot is rejected.



Assess each stage of the provisional voting process

Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

-- Are they now registered for future elections?
-- If not, what they need to do to become registered?

Briefing for

U. S. Election Assistance Commission
Advisory and Standards Board

DISCUSSION AND QUESTIONS

May 2006

DRAFT

Deliberative Process Privilege

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

November 23, 2005

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Submitted by

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

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The Moritz College of Law, The Ohio State University

FINAL DRAFT

11/23/2005

Report to the
U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

CONTENTS

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Background of the Research

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning provisional voting, a sample survey of local election officials, and a statistical analysis of provisional voting in the 2004 election. Also consulted as a basis for these recommendations were other studies, notably the EAC's Election Day Survey.[1]

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

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.[3] The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that the ballot must be cast in order to be counted.[4]

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, include first-time voters who cannot provide identification, as required under HAVA, and voters who were

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[1] Appendix 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures and describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

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

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

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Help American Vote Act¶

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challenged at the poll.[5] HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. HAVA also requires election administrators to notify individuals of their opportunity to cast a provisional ballot.

Provisional Ballots in the 2004 Election

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.[6]

These totals obscure the tremendous variation in provisional voting among the states. HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Six states accounted for two-thirds of all the provisional ballots cast.[7] State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000, from a high of 7% in Alaska's to Vermont's .006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted ballots at more than twice that rate: 44%. (Or, as the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without."[8])

The wide variations in the use of provisional ballots argue for the promulgation of best practices that states can use to determine how to make procedures clearer to both officials and voters could improve the implementation of provisional voting across the country.

One important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.[9]

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

[6] These figures differ slightly from those in the Election Day Survey. Data used for this study include complete voting data for New Mexico, for which the Election Day Survey had only partial data, and vote totals for Pennsylvania, which was not included in the provisional voting analysis in the Election Day Survey. See the appendix to this report for a full explanation of the differences in data between this research and the Election Day Survey.

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

[8] Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

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

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- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.[10] That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

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

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

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC should consider providing the "new" states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Current understanding of the provisional voting processes in use in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such

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

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actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.[11]

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2. "Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted. Some states merely require a voter's signature, some match signatures, some require identity documents, others require an affidavit, and a few require photo identification. [12]
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.

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- Voter registration databases provided information that reduced the number of provisional ballots counted.[13] In states using provisional voting for the first time, states with

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

[12] See Table 2 in Appendix 2 for information on the verification method used in each state.

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

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registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.[14]
  - In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.[15]

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.[16] Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."[17]

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Election Line reported that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.

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

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

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[16] For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

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

- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

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

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

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

- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

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

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Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.[18]¶
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The Election Day Study found that jurisdictions with lower education and income tend to report more inactive voter registrations, lower voting turnout, higher number of provisional ballots case, lower average number of poll workers per polling place and greater percentage of inadequately staffed polling places. These differences in demographics and resources produce different experiences with provisional voting.[19]¶

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Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know, that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

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

Estimates of Votes Lost In 2000 Presidential Election

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

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

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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)*. Whatever the precise figure, it seems ... [8]

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

Legislative Response

Indeed, several states[20] came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.[21]

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

The issue of counting provisional ballots cast in the wrong precinct was addressed by Colorado, Arkansas, and North Dakota.

Litigation

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

This litigation was significant nonetheless.

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

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

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

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

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- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

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Need for Promulgation of Best Practices

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

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

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Recommendations for Best Practices

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

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Self-evaluation of Provisional Voting –4 Key Questions

The first recommendation is not for a specific procedure, but rather for a way of thinking about provisional voting. As legislators and election officials in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?

2. Is the system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and with litigation looming?

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3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

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

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

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Best Practices For Each Step In The Process

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

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The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result-- well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."[22]

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

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.[23] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.

- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from be penalized by ministerial errors at the polling place.[24]

- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [25] Recent legislation in Arizona indicates that the EAC's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot. [26]

A. Registration and Pre-Election Information for Voters

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

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency." [27]

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

[24] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

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

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

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

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2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[28]

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3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

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B. At the Polling Place

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[29] After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." [30] Such statutory direction could help other states ensure uniform instruction of poll workers.

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2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [31] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the

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[28] The Century Foundation, op. cit.

[29] 8 Colo. Code Regs. § 1505-1, Rule 7.1.

[30] 2005 N.M. Laws 270 page no. 4-5.

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

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number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[32]

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.[33]

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C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."[34] Nonetheless, the *Panio v. Sutherland*[35] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

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1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted

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

[33] 10 Ill. Comp. Stat. Ann. 5/18A-10(b). Indiana requires that the precinct election board give the ballots to the Inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4.

[34] The Century Foundation, op. cit.

[35] 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

[37] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama – 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c) (1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.[37]

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2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct. [38] The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report.

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3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location. [39]
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[40]

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

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.

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

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

[40] 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

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RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
RRD	(Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

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2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

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E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

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Broader Considerations

G. Integrity and the Appearance of Integrity

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

2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.

3. State laws or regulation should require the evaluation process for provisional ballots to be public.

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

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

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

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1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.

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

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

Conclusion -- Research-based, continuing improvements for provisional voting are needed

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The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

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To answer those questions, the Eagleton-Moritz team undertook the following research efforts:

1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.
3. Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approached to voter identification
4. Collection and review of the provisional voting statutes and regulations in all 50 states.
5. Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

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Our research-based recommendations provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states moved forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

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ATTACHMENT 1 – Characteristics of the Provisional Voting Process

Classification of the States

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

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

Comment [o1]:

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

Please note that:

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

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

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

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

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New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting[41] and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

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

Comment [o2]: It would be useful here to insert a table showing our classification as old or new.

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We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as "old" states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Comment [o3]: Under this criterion, how did Florida become an "old" state?

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

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[41] This study can be found at: http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf.

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Table 1
CATEGORIZATION OF STATES -- Old vs New

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

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[42] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

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

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Table 2 **CATEGORIZATION OF STATES -- Statewide Registration Database**			
Had Database 2004	**No Database A-N**	**No Database N-W**	**HAVA Exempt or NA**
Alaska	Alabama	Ohio	Iowa
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Idaho	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
16	**27**		**8**

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Comment [o4]:

Out-of-Precinct Ballots

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

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Table 3
CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots

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

Voter Identification

We relied on Electionline studies, including the Voter Identification study[43] and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.[44] The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

Table 4
CATEGORIZATION OF STATES -- Forms of Identification Required

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[43] This study can be found at: http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf

[44] In 2004, ElelctionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

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States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Give Name	Sign Name	Match Signature	Provide ID	Photo ID
Maine	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
New Hampshire	*Idaho*	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
Wisconsin	Michigan	West Virginia	Georgia	
Wyoming	Minnesota		Kentucky	
	Mississippi		Missouri	
	Nebraska		Montana	
	New Mexico		*North Dakota*	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
9	14	8	15	5

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Comment [o5]: Again, this would work better as a table.

Verification Method

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

Table 5
CATEGORIZATION OF STATES -- Ballot Evaluation Methods
States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

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

Data Collection

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

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

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Table 6
Updated information by State

Received Updated Data	**Did Not Receive Updated Data**
California	Alabama
District of Columbia	Alaska[45]
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland[46]	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska[47]	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
26 States	**25 States**

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

[46] Maryland reported provisional ballots that were counted per county, but not number cast.

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

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Data Differences

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

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

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Attachment 1 Characteristics of the Provisional Voting Process, Classification of the States¶
Attachment 2 State Provisional Voting Systems, Comparative Tables¶
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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

---

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

ATTACHMENT 2 -- Data

Table 1 -- Provisional Voting Basic Statistics

States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Alabama	Affidavit	0.10	28.00
Alaska	PV	7.20	97.00
Arizona	PV	3.66	73.00
Arkansas	PV	0.35	48.00
California	PV	3.96	74.00
Colorado	LPV	1.84	76.00
Connecticut	None	0.03	32.00
Delaware	None	0.01	6.00
District of Columbia	PV	3.51	71.00
Florida	PV	0.13	36.00
Georgia	None	0.12	30.00
Hawaii	None	0.01	7.00
Idaho	EDR	EDR	EDR
Illinois	None	0.42	51.00
Indiana	None	0.02	15.00
Iowa	PV	0.53	52.00
Kansas	PV	2.68	70.00
Kentucky	Affidavit	0.01	15.00
Louisiana	None	0.12	40.00
Maine	EDR	EDR	EDR
Maryland	PV	1.33	65.00
Massachusetts	None	0.08	23.00
Michigan	Affidavit	0.07	58.00
Minnesota	EDR	EDR	EDR
Mississippi	Affidavit		
Missouri	None	0.12	40.00
Montana	None	0.08	55.00
Nebraska	LPV	1.71	78.00
Nevada	None	0.29	40.00
New Hampshire	EDR	EDR	EDR
New Jersey	LPV	1.96	55.26
New Mexico	PV	1.16	57.00
New York	PV	3.27	40.30
North Carolina	PV	1.21	55.00
North Dakota	NR	NR	NR
Ohio	LPV	2.20	78.00
Oklahoma	None	0.01	8.00
Oregon	PV	0.39	85.00
Pennsylvania	None	0.45	49.00
Rhode Island	None	0.23	46.00
South Carolina	PV	0.20	65.00
South Dakota	None	0.02	12.00
Tennessee	None	0.14	38.00
Texas	Affidavit	0.10	21.00
Utah	None	2.00	70.00
Vermont	None	0.01	37.00
Virginia	PV	0.02	17.00
Washington	PV	2.44	80.00
West Virgina	PV	1.11	63.00

ATTACHMENT 2 -- Data

Wisconsin	EDR	0.00	32.00
States	**PV Status Pre-HAVA**	**PV % of the Vote**	**PV % of the vote Counted**
Wyoming	EDR	0.01	25.00

Table 2 -- Characteristics of State Provisional Voting Systems

States	Was there a Statewide DB in 2004?	Are Outside Precincts Counted in Presidental Elections?	Verification Method	What is the time line for counting PV ballots?	Is this Review process open?
Alabama	No	No	Check address & registration	7 days	unclear
Alaska	Yes	Yes	Signature	15 days	limited
Arizona	Yes	No	Check address & registration	10 days	unclear
Arkansas	No	Yes	Check address & registration	15 days	Unclear
California	No	Yes	Signature	28 days	yes
Colorado	No	Yes	Check address & registration	12 days	limited
Connecticut	Yes	No	Affidavit	6 days	unclear
Delaware	Yes	Yes	Affidavit	Until Completion	limited
D.C.	Yes	No	Check address & registration	*	limited
Florida	No	No	Signature	11 days	yes
Georgia	Yes	Yes	Affidavit	7 days	unclear
Hawaii	Yes	Yes	Affidavit	6 days	limited
Idaho	No	EDR	EDR	*	unclear
Illinois	No	Yes	Affidavit	14 days	unclear
Indiana	No	No	Bring ID later	13 days	yes
Iowa	No	No	Bring ID later	2 days	unclear
Kansas	No	Yes	Bring ID later	*	limited
Kentucky	Yes	No	Affidavit	3 days	unclear
Louisiana	Yes	Yes	DOB and Address	4 days	yes
Maine	No	EDR	EDR	*	unclear
Maryland	No	Yes	Bring ID later	*	unclear
Massachusetts	Yes	No	Affidavit	4 days	unclear
Michigan	Yes	No	Bring ID later	14 days	unclear
Minnesota	?	EDR	EDR	14 days	Unclear
Mississippi	No	No	Affidavit	*	yes
Missouri	No	No	Check address & registration	14 days	limited
Montana	No	No	Bring ID later	*	unclear
Nebraska	No	No	Affidavit	7 days	limited
Nevada	No	No	Affidavit	7 days	unclear
New Hampshire	No	EDR	EDR	*	unclear
New Jersey	No	No	Bring ID later	28 days	yes
New Mexico	Yes	Yes	Bring ID later	10 days	unclear
New York	No	No	Affidavit	10 days	yes
North Carolina	No	Yes	Varies	7 days	yes
North Dakota	NR	NR	NR	*	unclear
Ohio	No	No	Check address & registration	*	unclear
Oklahoma	Yes	No	Check address & registration	3 days	limited
Oregon	No	Yes	Signature	*	limited
Pennsylvania	No	Yes	Check address & registration	*	unclear
Rhode Island	No	Yes	Check address & registration	*	yes
South Carolina	Yes	No	Check address & registration	4 days	unclear
South Dakota	Yes	No	Affidavit	3 days	unclear
Tennessee	No	No	Affidavit	48 hours	unclear
Texas	No	No	Bring ID later	7 days	unclear
Utah	No	Yes	Bring ID later	*	unclear
Vermont	No	Yes	Affidavit	2 days	unclear

States	**Was there a Statewide DB in 2004?**	**Are Outside Precincts Counted in Presidental Elections?**	**Verification Method**	**What is the time line for counting PV ballots?**	**Is this Review process open?**
Virginia	No	No	Affidavit	7 days	limited
Washington	No	Yes	Check address & registration	*	yes
West Virgina	Yes	No	Check address & registration	30 days	unclear
Wisconsin	No	No	Bring ID later	*	unclear
Wyoming	No	No	Affidavit	*	unclear

* Data to come on timeline classifications for these remaing states.

[redacted]

Table 4 -- Litigation and Statues

<u>States</u>	<u>Litigation pre-2004 election?</u>	<u>Litigation post-2004 election?</u>	<u>Were clarifying PV regulations promulgated post election 2004?</u>	<u>Type of Clarifications</u>
Alabama				
Alaska				
Arizona		Yes	Yes	Voter ID
Arkansas			Yes	Wrong precinct
California				
Colorado	Yes	Yes	Yes	Wrong precinct, timeline, counting
Connecticut				
Delaware				
D.C.				
Florida		Yes	Yes	Timeline, eligibility
Georgia			Yes	Voter ID
Hawaii				
Idaho				
Illinois				
Indiana			Yes	Voter ID, timeline, counting
Iowa				
Kansas				
Kentucky				
Louisiana			Yes	Counting
Maine				
Maryland				
Massachusetts				
Michigan		Yes		
Minnesota				
Mississippi				
Missouri				
Montana			Yes	Eligibility
Nebraska				
Nevada				
New Hampshire				
New Jersey				
New Mexico			Yes	Counting
New York		Yes		
North Carolina		Yes	Yes	Wrong precinct, counting
North Dakota				
Ohio	Yes	Yes		
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota				
Tennessee				
Texas				
Utah				

States	**Litigation pre-2004 election?**	**Litigation post-2004 election?**	**Were clarifying PV regulations promulgated post election 2004?**	**Type of Clarifications**
Vermont				
Virginia			Yes	Timeline, voter notification
Washington	Yes	Yes	Yes	Voter ID, timeline, counting
West Virgina				
Wisconsin				
Wyoming				

Table 3 -- Information for Voters

Provided on State Elections Website?					
States	**PV Requirements**	**VID Requirements**	**Registration Verification**	**Precinct Verification**	**Notification of Voters**
Alabama	No	Yes	No	No	Phone
Alaska	No	Yes	No	Yes	Phone
Arizona	No	No	No	No	Counties
Arkansas	Yes	No	No	No	Counties
California	Yes	No	No	Yes	Counties
Colorado	Yes	Yes	No	No	Counties
Connecticut	Yes	Yes	No	No	Phone
Delaware	Yes	No	No	Yes	Website
D.C.	Yes	No	Yes	Yes	Website
Florida	No	Yes	No	No	Counties
Georgia	No	Yes	Yes	Yes	Counties
Hawaii	No	Yes	No	Yes	Phone
Idaho	EDR	Yes	No	No	EDR
Illinois	Yes	No	No	No	Website
Indiana	No	No	No	No	Phone
Iowa	Yes	Yes	No	No	Mail
Kansas	Yes	No	No	No	Counties
Kentucky	Yes	No	Yes	Yes	Website
Louisiana	Yes	No	No	Yes	Phone
Maine	EDR	Yes	No	Yes	EDR
Maryland	Yes	Yes	No	No	Website/Phone
MA	Yes	No	No	Yes	Phone
Michigan	Yes	Yes	Yes	Yes	Mail
Minnesota	EDR	Yes	No	Yes	EDR
Mississippi	No	No	No	No	Counties
Missouri	Yes	Yes	No	No	Phone
Montana	No	Yes	No	No	Mail
Nebraska	No	No	No	No	Website/Phone
Nevada	No	No	No	No	Website/Phone
New Hampshir	EDR	No	No	No	EDR
New Jersey	Yes	Yes	No	No	Website/Phone
New Mexico	Yes	Yes	No	No	Phone
New York	No	No	No	No	Mail
North Carolina	No	No	Yes	Yes	Website
North Dakota	NR	Yes	NR	No	NR
Ohio	Yes	Yes	No	No	Phone
Oklahoma	No	Yes	No	No	Phone
Oregon	No	No	No	No	Phone
Pennsylvania	Yes	Yes	No	No	Phone
Rhode Island	Yes	Yes	No	No	Website
South Carolina	Yes	Yes	Yes	No	Website
South Dakota	Yes	No	No	Yes	Mail
Tennessee	No	No	No	No	Mail
Texas	Yes	Yes	No	No	Mail
Utah	Yes	Yes	No	Yes	Phone
Vermont	No	Yes	No	Yes	Phone
Virginia	Yes	Yes	No	Yes	Phone
Washington	No	Yes	No	No	Counties

Provided on State Elections Website?					
States	**PV Requirements**	**VID Requirements**	**Registration Verification**	**Precinct Verification**	**Notification of Voters**
West Virgina	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:27 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Provisional Voting Report Status and Request for Advice

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:26 AM -----

"John Weingart"
[redacted]
11/15/2005 10:53 AM
Please respond to
[redacted]

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel" <[redacted]u>
cc "Tom O'Neill" <[redacted]>
Subject Provisional Voting Report Status and Request for Advice

KeyDatesRev1110.doc Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18^th . Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?

2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule

realistic in anticipating EAC comments no later than the week of December 12^th on the report we send you at the end of this week?

3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)

4. In any case, we will need a no-cost extension to the contract to carry us past December 31^st . How do we make that request?

5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

DRAFT FOR DISCUSSION

REVISED SCHEDULE FOR EAC PROJECT

November 2005 – February 2006

November 10, 2005

Assumes no guidance document, only analysis and recommended best practices

DATE	Project Management	Provisional Voting	Voter ID
Week of 10/31		Review draft report to EAC (Team) Submit comments on report (Team)	Voter ID Research to TV
Week of 11/7	Status reports to JD for October tasks (all)	Redraft report (TON) Review and approve report (Team) Final draft report (TON)	Research continues (TV)
Week of 11/14	Submit monthly progress report (JD)	**Submit report to EAC for review** and to PRG for information Discuss with EAC use of Board of Advisors to expand "best practices." (TON, JW) EAC reviews report	Research continues (TV)
Week of 11/21		EAC review continues	Complete data collection for Voter ID analysis. (TV)
Week of 11/28		EAC review continues	Draft report on Voter ID analysis (TV)

Week of 12/5	Status reports to JD for November tasks (all)	EAC review continues	Internal review (PT)
Week of 12/12	Submit monthly progress report (JD)	Receive EAC comments on report Revise and PT review	Revise draft (TV) Draft alternatives (TON) Review and comment on alternatives (PT)
Week of 12/19		**Finalize analysis and best practices to EAC for publication**[1]	Complete draft report and alternatives (TV, TON)
Week of 12/26			Review draft report and alternatives (PT)
Week of 1/2/06	Status reports to JD for December tasks (all)		**Report and alternatives to PRG**
Week of 1/9/06			PRG meets and comments Revise (TV & TON)

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[1] If the EAC chooses not to issue a Guidance Document on provisional voting but only to recommend "best practices," the register publication, hearing and comment period may not be required, which would shorten the process by at least 30 days.

DRAFT FOR DISCUSSION

Week of 1/16/06	Submit monthly progress report (JD)		**Submit draft report, alternatives and compendium to EAC** EAC reviews
Week of 1/23/06			EAC review continues
Week of 1/30/06			Comments from EAC Revise (TV & TON)
Week of 2/6/06	Status reports to JD for January tasks (all)		Review and approve revised report and recommendations for best practices (PT)
Week of 2/13/06	Submit monthly progress report (JD)		**Submit report and best practices to EAC**
Week of 2/20/06	FINAL status reports to JD for all tasks (all) Final project and fiscal report to EAC **PROJECT ENDS**		

Karen Lynn-Dyson/EAC/GOV
06/30/2006 08:45 AM

To "Thomas O'Neill" [redacted]
cc [redacted]
bcc twilkey@eac.gov
Subject Re: Final Provisional Voting and Voter ID reports

Again, many thanks to the Eagleton/Moritz team.

I'm certain we'll be in touch over the next several weeks as we wrap up loose ends.

Regards-

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

"Thomas O'Neill" [redacted]

"Thomas O'Neill"
[redacted]
06/29/2006 08:42 PM

To klynndyson@eac.gov
cc [redacted]
Subject Final Provisional Voting and Voter ID reports

Karen,

Attached are our final reports on Provisional Voting and Voter Identification in PDF format. The hard copies with all attachments are on their way to you via Fed Ex.

I understand from your email today that we will be receiving a letter from Tom Wilkey on the final steps to wrap up the contract. All of us are eager to see the Commission move forward with recommendations to the states for best practices on provisional voting and to take the next step on voter id issues by submitting our report to the advisory boards.

Thanks for your long effort to help us see this research through to submission. I hope we'll have a further chance to work together as our recommendations approach implementation.

Hope you enjoy some time off during the coming long weekend and July 4 celebration.

Tom O'Neill VoterIDReport062806INAL.pdf

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

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

June 28, 2006

Submitted by

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

The Moritz College of Law, The Ohio State University

Report to the
U. S. Election Assistance Commission

Best Practices to Improve Voter Identification Requirements

CONTENTS

The Research Team

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

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

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

Project Management Team

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

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

Ingrid Reed
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Eagleton Institute of Politics

Daniel P. Tokaji
Assistant Professor of Law
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Graduate Assistant,
Eagleton Institute of Politics

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Donald Linky
Senior Policy Fellow
Eagleton Institute of Politics

Sara A. Sampson
Reference Librarian,
Moritz College of Law

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

Laura Williams
The Moritz College of Law

Peer Review Group

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

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

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

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

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University of California at Los Angeles

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

Bradley Smith
Professor of Law
Capital University Law School

Tim Storey
Program Principal
National Conference of State Legislatures

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

REPORT AND RECOMMENDATIONS TO THE EAC
VOTER IDENTIFICATION ISSUES

Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud –multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

- Opponents seek to forestall more stringent identification requirements, such as government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate. It inquires whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout. That analysis would constitute an important first step in assessing tradeoffs between ballot security and ballot access. The aim of this research is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis examined the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information (such as the specific reasons some potential voters are not allowed to cast a regular ballot) that that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on

turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:[1] the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.[2] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, the different statistical methods and two different sets of data on turnout in 2004 election used in the study point to the same general finding. Stricter voter identification requirements (for example, requiring voters to present non-photo ID compared to simply stating their names) were correlated with reduced turnout in the models employed, as described in detail in Appendix C. [3] As explained below, these models find that a statistically

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[1] See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

[2] The EAC has contracted with other researchers to study vote fraud issues.

[3] Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout.* Using the aggregate data, photo ID did not have a significant effect on turnout, possibly because in the

significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. (But note that in the model using the aggregate data, photo ID did not have a significant effect on turnout. The reason may have been that in this election, each state with a photo ID requirement provided an alternate way for those without a photo ID to cast a regular ballot.) Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible voters, however, the tradeoffs between ballot security and ballot access cannot be assessed.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.[4] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state

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2004 election every state requiring photo ID provided an alternative way to cast a regular ballot for those voters who lacked photo identification. The individual data from the Current Population Survey did show a significant effect, but only for the overall sample and for white voters, which may be an artifact of the large sample size.

[4] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always

for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, for the maximum ID requirements, the match-signature requirement and the provide-a- non-photo-ID requirement, but not the photo ID requirement, were all correlated with lower turnout compared to requiring that voters state their names. When the registration closing deadline was added as an independent variable in the aggregate analysis, signature match and non-photo id remained significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such

knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[5] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls– are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

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[5] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. A "Voter Impact Statement" would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC might also use the information reported by the states to encourage further assessment by the states of the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
    I. Useful information could be supplied by state-sponsored surveys of voters conducted by local election officials. Such surveys would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks

statutory or regulatory requirements. Such reports should be available to the public.

4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[6], and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is less certain.

SUMMARY OF RESEARCH

Background and Approach of the Study

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

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[6] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967) found that local variations in the rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.
- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics.* 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.

- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior.* 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.

- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.
- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.*, 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [7] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

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[7] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[8]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[9] Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that

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[8] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[9] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[10] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.[11] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

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[10] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[11] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards –legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest seven questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[12]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[13]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[14]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[15] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

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[12] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[13] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[14] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[15] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[16]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it, intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

Voter ID and Turnout

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004.These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[17] Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.[18]

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the

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[16] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

[17] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

[18] As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.[19] Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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[19] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

TABLE 1 – Voter ID Requirements[20]

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

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[20] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .05$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ($r= -.20$, $p = .16$). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.2 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.4 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables.[21](Dichotomous variables reflect either the presence or absence of a characteristic. In the dummy variable for non-photo ID, a state would be coded as 1 if it required non-photo ID, and 0 otherwise.)

Voter identification requirements are just one factor that might affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American [22]
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering

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[21] The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

[22] The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

The dependent variable in each model using the aggregate data was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that the stricter voter identification requirements of matching one's signature to a signature on file with election authorities or presenting a non-photo ID are associated with lower turnout compared to turnout in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. (A "dummy variable" represents a particular attribute and has the value zero or one for each observation, e.g. 1 for male and 0 for female.) Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election. [23]

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[23] This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum requirements, a signature match and non-photo identification –but not photo identification– were correlated at a significant level with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.[24] Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[25] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens, who in this survey were not asked the voter registration and turnout questions. In

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[24] For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[24] Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

[25] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have influenced turnout in 2004.[26] The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[27]

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.[28] Table 3 below shows predicted probabilities (calculated from the probit

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[26] The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

[27] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[28] A probit model is a popular specification of a generalized linear regression model, using the probit link function.

coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.[29]

Table 3. Predicted probability of voter turnout – all voters

	Maximum requirement	Minimum requirement
State name	91.7%	91.5%
Sign name	89.9%	90.2%
Match signature	Not significant	Not significant
Non-photo ID	89.0%	89.0%
Photo ID	88.8%	—
Affidavit	—	87.%5
Total difference from "state name" to "photo ID" or "affidavit"	**2.9%**	**4.0%**
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from stating one's name to providing photo identification or an affidavit , with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[30] In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those with fewer years of education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum

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[29] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[30] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.[31] The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

More rigorous voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data,

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[31] Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

In the aggregate data, the match-signature requirement and the provide-a-non-photo ID requirement were correlated with lower turnout compared to requiring that voters state their names. But the photo-ID requirement did not have an effect that was statistically significant, possibly because in 2004 each state requiring a photo-ID provided an alternative way to cast a regular ballot for voters who lacked that document.

In the model using the individual-level data the signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names (in the entire sample and for white voters, but the statistical significance may be an artifact of the very large sample size). That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*).. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.[32] Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a

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[32] Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a

balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgement in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased. [33]

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[33] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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

June 28, 2006

Submitted by

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Report to the U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

CONTENTS

The Research Team

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

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

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

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

EXECUTIVE SUMMARY

Background and Methodology

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

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

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

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

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

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

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

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, we:

1. Surveyed 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.[4]
3. Analyzed statistically provisional voting data from the 2004 election to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification.
4. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

KEY FINDINGS

Variation among the states

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

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

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

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

An important source of variation among states was a state's previous experience with provisional voting and with the fail-safe voting provision of the National Voting Rights Act. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.[8] Part of that difference was due to how states had implemented the National Voting Rights Act, particularly in regard to voters who changed address within weeks of the election. Voters in California, for example, who moved within their county must cast a provisional ballot, the information from which is used to update the voter's address. Other states, Tennessee for example, found that some fail-safe voters were reluctant to vote by provisional ballot. As a result, Tennessee abandoned provisional voting for those who moved within counties and allows failsafe voters cast a regular ballot. Relatively fewer provisional ballots would tend to be cast in such states.

Variation within states

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

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

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

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

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

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

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.

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

The lessons of litigation

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

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

States move to improve their processes

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

- Florida, Indiana, Virginia, and Washington have clarified or extended the timeline to evaluate the ballots.

- Colorado, New Mexico, North Carolina, and Washington have passed legislation focused on improving the efficacy and consistency of the voting and counting process.
- Colorado, Arkansas, and North Dakota took up the issue of counting provisional ballots cast in the wrong precinct.

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

SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

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

Take a quality-improvement approach

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

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

Emphasize the importance of clarity

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

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

Court decisions suggest areas for action

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

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

<u>Assess each stage of the provisional voting process</u>

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

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

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

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

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots

are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.

- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

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

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

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

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

Final observation

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

Provisional Voting in 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other influences decreasing consistency among the states include:

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

- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, and some required provisional voters to execute an affidavit. [15]
    - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
    - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
    - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
    - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office
- Voter registration databases provided information that reduced the number of provisional ballots counted.[16] In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted only ballots cast in the proper precinct counted an average of 42% of provisional ballots. [17]
    - In experienced states, the disparity was even more pronounced: just over half of provisional ballots cast were counted in states requiring in-district ballots, while more than two-thirds were counted in those allowing out-of-precinct ballots.
    - If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.[18]

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

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

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

- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots. [19]
    - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks[20].
    - Those states that permitted less than one week counted an average of 35.4% of their ballots.
    - States that permitted between one and two weeks counted 47.1%.
    - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast[21].
    - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

Variation Within States

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

Electionline reported that:

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

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

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

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

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

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

provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

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

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

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

Effectiveness of Provisional Voting

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

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

Since we do not know how many registered voters who might have voted but could not, we cannot estimate with any precision how effective provisional voting was in 2004. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the

2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

Estimates of Votes Lost In 2000 Presidential Election

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

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

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

Legislative Response

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

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

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

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

[25] The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the *entire department's employees were mobilized to process provisional ballots.*" The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when

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

Litigation

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

This litigation was significant nonetheless.

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

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted by absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

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voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny." See Appendix 7, GAO, "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

RECOMMENDATIONS

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

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

Recommendations for Best Practices

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

Self-evaluation of Provisional Voting –4 Key Questions

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

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

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

Best Practices For Each Step In The Process

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

The Importance of Clarity

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

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant re-canvassing.[27] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[28]
- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [29] Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll

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

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

[28] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

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

workers may need appropriate training to understand their duty to give such voters a provisional ballot. [30]

A. Registration and Pre-Election Information for Voters

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

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

B. At the Polling Place

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[33] Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." [34] A state

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

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

[32] The Century Foundation, op. cit.

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

[34] 2005 N.M. Laws 270 page no. 4-5.

statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [35] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[36] States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

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

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

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

[37] The Century Foundation, op. cit.

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

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.[39]
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct. [40] While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. [41] Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

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[39] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama – 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)_(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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

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

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[42]

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

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

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days

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

following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

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

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

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma[43] or the Baldridge Quality

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

process [44] to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

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

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

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

ATTACHMENT 1 – Data Sources for Classification of the States

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

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

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

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

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

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

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

New vs. Old States

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

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

We included in the list of "Old States" all states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots. States in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

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

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

Table 1
CATEGORIZATION OF STATES -- Old and New

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

Statewide List of Registered Voters

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

Out-of-Precinct Ballots

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

Table 2
CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots

Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Georgia	Connecticut	New Hampshire
Illinois[47]	Delaware	North Dakota
Kansas	District of Columbia	Wisconsin
Louisiana	Florida	Wyoming
Maryland	Hawaii	
New Mexico	Indiana	
North Carolina	Iowa	
Oregon	Kentucky	
Pennsylvania	Massachusetts	
Rhode Island	Michigan	
Utah	Missouri	
Vermont	Montana	
Washington	Nebraska	
	Nevada	
	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
16	27	7

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

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

Verification Method

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

Table 3
CATEGORIZATION OF STATES -- Ballot Evaluation Methods

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

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

Data Collection

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

Table 4
Updated information by State

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

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

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

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

Data Differences

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

Table 5
Data Differences with the Election Day Study

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

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

Karen Lynn-Dyson/EAC/GOV
06/29/2006 04:06 PM

To [redacted]
cc "Tom O'Neill" [redacted]
bcc twilkey@eac.gov; Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC
Subject Re: Final Reports

Many thanks, John.

I have just completed the draft of a letter which addresses all of the matters pertaining to the close-out of the contract.

Look for the letter from Tom Wilkey in the next day or so.

Thanks to everyone for all of their hard work and perseverance over the last year or so.

Regards-

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

"John Weingart" [redacted]

"John Weingart"
[redacted]
06/29/2006 04:01 PM
Please respond to
[redacted]

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Tom O'Neill" [redacted]
Subject Final Reports

Karen - We are FedExing our final reports and other deliverables to the EAC this afternoon so you should receive them tomorrow or Monday at the latest. I am attaching the accompanying cover letter from Ruth Mandel. We will look forward to any comments, questions and other thoughts or reactions from the Commissioners and staff. While I am sure we will continue to be in touch over the next weeks and months, I do want to thank you for all your comments, coordination and general assistance.

- John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

WilkeyFINAL.doc

Deliberative Process Privilege

June 29, 2006

Thomas R. Wilkey, Executive Director
United States Election Assistance Commission
1225 New York Avenue N.W., Suite – 1100
Washington, DC 20005

Dear Mr. Wilkey:

We are sending you today the final report on Provisional Voting and the final draft report on Voter Identification issues. With this submission, we have completed the work required under the contract, which ends this week.

The Provisional Voting report is the same as presented to the Commission's advisory boards, with a brief addition on the effect of the National Voting Rights Act's fail-safe provisions on the states' experience with provisional voting. This addition was suggested during the meetings of the advisory boards. The report is now complete and ready to serve as the basis for guidance or recommendations that the Commission may decide to provide the states on provisional voting.

As you know, the EAC has not yet presented to its advisory boards the final draft Voter ID report we submitted in May. We would be happy to discuss with the Commission ways to reactivate the contract to enable us to present this report to these boards and, if necessary, make revisions so that it, too, can be in the final form that would allow it to serve as a basis for recommendations to the states.

Included with each report are the other deliverables specified by the contract.

We have enjoyed the opportunity to work with the EAC on this research project. Both Rutgers and Ohio State will continue to study these matters, just as we did before undertaking this project. Scholars at both institutions are incorporating the research techniques and findings into their continuing research endeavors.

Rutgers and Ohio State look forward to coordinating a public release of the two reports with the EAC. We anticipate considerable interest among scholars at other universities in the analysis and information contained in the reports, and look forward to seeing others use and build on these reports and their supporting materials to enhance understanding of these important public policies.

Of course, we hope that our ongoing scholarship will continue to be of value to the Commission and that we may have further opportunities to work with the Commission on other projects to improve the functioning of our nation's electoral processes.

Sincerely,

Ruth B. Mandel, Principal Investigator
Director, Eagleton Institute of Politics
Board of Governors Professor of Politics

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:57 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Voter ID Report and Appendices

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:55 AM -----

"Tom O'neill"
[redacted]
05/17/2006 09:25 AM

To klynndyson@eac.gov
cc [redacted]
[redacted] "Tim Vercellotti"
[redacted]
"'Johanna Dobrich'" [redacted]
Subject Voter ID Report and Appendices

Karen,

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

Thanks for your forbearance.

Tom O'Neill

Appendices517.doc VoterIDReport05170910.doc

Appendices

a. Summary of Voter ID Requirements by State
b. Summary of case law on Voter ID issues
c. Vercellotti --Analysis of Effects of Voter ID Requirements on Turnout
d. Indexed database of major articles on Voter ID Requirements and related topics
e. Compendium of states' legislation, procedures, and litigation (available as an electronic document)

Appendix A
Summary of Voter Identification Requirements By State

Prepared by
Sara A. Sampson, Reference Librarian,
The Ohio State University Moritz College of Law.

Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification: (1) A current valid photo identification. (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following: a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification. b. A valid United States passport. c. A valid Alabama hunting or fishing license. d. A valid Alabama permit to carry a pistol or revolver. e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States. f. A valid United States military identification card. g. A certified copy of the elector's birth certificate. h. A valid Social Security card. i. Certified naturalization documentation. j. A certified copy of court records showing adoption or name change. k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card"). (c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b). (e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law. (f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs. Effective Date: June 24, 2003	Ala. Code § 17-11A-1
Alaska	Provide ID	(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including (1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or (2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this	Alaska Stat. § 15.15.225

		paragraph must show the name and current address of the voter. (b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under AS 15.07.050, and did not provide identification as required in AS 15.07.060. (c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot. effective June 17, 2003	
Arizona	Provide ID	B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot: 1. The person shall present either one of the following: (a) A current form of identification that bears a photograph of the person and the name of the person. (b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person. 2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584. Effective Dec. 1, 2003	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	7-5-305. Requirements. (a) Before a person is permitted to vote, the election official shall: (1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list; (2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth; (3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list; (4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate; (5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct. (B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files. (C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct; (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files; (7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and	Arkansas Code Annotated § 7-5-305

		(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card. (B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification. (ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney. (iii) The prosecuting attorney may investigate possible voter fraud; and (9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the preson is a disabled voter and presents himself or herself to vote. Effective: July 16, 2003	
California	Sign Name	Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article. (Enacted in 1994, no amendments since)	Cal. Elec. Code § 14216
Colorado	Provide ID	(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges, * * * (4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title. (19.5)(a) "Identification" means: (I) A valid Colorado driver's license; (II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.; (III) A valid United States passport; (IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state; (V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States; (VI) A valid United States military identification card with a photograph of the eligible elector; (VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector; (VIII) A valid medicare or medicaid card issued by the United States health care	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

		financing administration; (IX) A certified copy of a birth certificate for the elector issued in the United States; or (X) Certified documentation of naturalization. (b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado. Effective 5/28/2004	
Connecticut	Provide ID	(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate. Effective May 10., 2004	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record. Effective: July 9, 2002	15 Del. Code § 4937
D.C.	Sign Name	(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection. (2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the	D.C. Code § 1-1001.07

		polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection. (3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records. (Effective April 3, 2001)(not added as part of 2005 amendment)	
Florida	Photo ID	101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector. (2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49. **97.0535** (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired: 1. Florida driver's license. 2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles. 3. United States passport. 4. Employee badge or identification. 5. Buyer's club identification. 6. Debit or credit card. 7. Military identification. 8. Student identification. 9. Retirement center identification. 10. Neighborhood association identification. 11. Entertainment identification. 12. Public assistance identification. (b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant: 1. Utility bill.	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535

		2. Bank statement. 3. Government check. 4. Paycheck. 5. Other government document (excluding voter identification card). Version effective 1/1/2005-12/31/2005	
Georgia	Provide ID	(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following: (1) A valid Georgia driver's license; (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification; (3) A valid United States passport; (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state; (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business; (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; (7) A valid Georgia license to carry a pistol or revolver; (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States; (9) A valid United States military identification card; (10) A certified copy of the elector's birth certificate; (11) A valid social security card; (12) Certified naturalization documentation; (13) A certified copy of court records showing adoption, name, or sex change; (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector; (15) A bank statement, or a legible copy thereof, showing the name and address of the elector; (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or (17) A government document, or a legible copy thereof, showing the name and address of the elector. (b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement." effective June, 2003	Ga. Code. Ann. § 21-2-417

Hawaii	Photo ID	(b) The voter shall present valid identification to the official in charge of the pollbook.	Haw. Code. R. § 2-51-80 (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b)
		Do I Need an I.D. to Vote on Election Day? Yes. Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification. From the 2004 version of the administrative code.	Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix
		§ 11-136 Poll book, identification, voting. Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person. After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. Last amended 2003.	HRS 11-136
Idaho	Sign Name	(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book. (2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein. (5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. (Last amended in 1972)	Id. St. §34-1106
Illinois	Give Name	Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he	10 Ill. Comp. Stat. 5/17-9

		shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.	
Indiana	Sign Name		West's Annotated Indiana Code § 3-11-8-25
Iowa	Sign Name	1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form: VOTER'S DECLARATION OF ELIGIBILITY I do solemnly swear or affirm that I am a resident of the .... precinct, ... ward or township, city of ...., county of ...., Iowa. I am a registered voter. I have not voted and will not vote in any other precinct in said election. I understand that any false statement in this declaration is a criminal offense punishable as provided by law. Signature of Voter Address Telephone Approved:	Iowa Code § 49.77

		Board Member 2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials. 3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner. A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote. (From 2004 version of Iowa Annotated Code; effective January 1, 1995)	
Kansas	Sign Name	(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention. (Approved April 14, 2004, 2004 Kansas Laws Ch. 93)	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	117.227 Confirmation of voter's identity Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification. Effective: 7/15/02 31 KAR 4:010. Voter identification cards. Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.	Ky Rev. Stat. Ann. 117.227 31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	A. Identification of voters. (1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place. (2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant	La. Rev. Stat. Ann. 18:562

		shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565. Effective: 1/1/2002	
Maine	Give Name	The voting procedure is as follows. 1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice. (In effect at time of 2003 amendment: 2003, c. 584, § 9)	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	10-310. (a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall: (1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot; (2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or (ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article; (3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register; (4) verify the address of the voter's residence; (5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and (6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.	Md. Elec. Law § 10-310
Mass.	Give Name	Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited. Last amended in 1981 (5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).	Mass. Ann. Laws 54 § 76 950 Mass. Code Regs. 52.03
Michigan	Sign Name	(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state	Mich. Comp. Laws Ann. §

		identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727. (2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector. The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies. (Effective March 31, 1997)	168.523
Minnesota	Sign Name	(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not	Minn. Stat. § 204C.10

		more than $10,000, or both." (b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth. (c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest. (Effective January 1, 2004)	
Mississippi	Sign Name	* * * When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance. (Effective January 1, 1987)	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list: (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state; (2) Identification issued by the United States government or agency thereof; (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri; (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; (5) Driver's license or state identification card issued by another state; or (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose. (Last amended in 2002)	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address. (From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [Unrelated section was amended in 2005])	Mont. Code. Ann. §13-13-114(1)(a)
Nebraska	Sign Name	(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document. (Last amended in 2003) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter. (Last updated in 2003)	Neb. Rev. Stat. § 32-913 Neb. Rev. Stat. § 32-914
Nevada	Match Sig.	1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2. 2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are: (a) The card issued to the voter at the time he registered to vote; (b) A driver's license; (c) An identification card issued by the Department of Motor Vehicles; (d) A military identification card; or	Nev. Rev. Stat.§ 293.277

		(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture. Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers. b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery. c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5). Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

		case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list. E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot. G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster. (From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)	(Recompiled as §1-12 -7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)
New York	Match Sig.	1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith. 2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election. 3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature. 4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the	N.Y. Law § 8-304 (McKinney)

		space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record. 5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same Last Amended 1986	
North Carolina	Give Name	(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook. 1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address. (From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark. The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot. (Effective at time of last update, 1992 H 182, eff. 4-9-93)	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry. (Last amended in 1990) Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours. (Last amended in 1990)	Okla. Stat. Ann. tit. 26, § 7-114 Okla. Stat. Ann. tit. 26, § 7-117
Oregon	Match Sig.	All elections in Oregon are Vote by Mail. An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity (http://www.uhavavote.org/votingguide/votebymail.html) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register. (In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))	
Rhode Island	Give Name	(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form: BALLOT APPLICATION (Poll List) Senatorial District ______________ Representative District ________ Voting District _________________ Election Date __________________________ I hereby certify that I am a registered and qualified elector in the above voting district of City of and hereby make application for ballots to be voted at this election. ________________________________ (Signature of Voter) ________________________________ (Residence Address) Number Approved ______________________ (Supervisor of Election)	R.I. Gen. Laws § 17-19-24

		(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time. (Last amended 2004, Current through January 2005 Session)	
South Carolina	Photo ID	**§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.** When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5- 125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers. Last amended: 1968	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either: (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or	S.D. Codified Laws § 12-18-6.1

		technical school, located within the State of South Dakota. Last amended March 2004	
Tennessee	Provide ID	Identification of eligible voters (a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet. (2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists: (A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar; (B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list; (C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and (D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission. Last amended 2003	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place. (Last amended in 1997)	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges. (b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district. (3) If the election judge determines that the voter is registered: (a) the election judge in charge of the official register shall: (i) write the ballot number opposite the name of the voter in the official register; and	Utah Code Ann. § 20A-3-104

		(ii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter's name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) hand the voter a ballot; and (iv) allow the voter to enter the voting booth. (In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)	
Vermont	Give Name	Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and: (1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting. (2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting (Last amended in 2003)	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him. B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business. If the voter's name is found on the pollbook, if he presents one of the forms of	Va. Code. Ann.

		identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement. (Version in effect as of 2004- effective 4/12/2004)	
Washington	Sign Name	29A.44.201. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. (In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004) 29A.44.210. Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter. The precinct election officers shall then record the voter's name. Effective date: July 1, 2004	Wash. Rev. Code § 29A.44.201 & 29A.44.210
West Virginia	Match Sig.	(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon. * * * (c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the	W. Va. Code § 3-1-34 (a)

		election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter. (In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)	
Wisconsin	Give Name	6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number. (In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)	Wis. Stat. § 6.79
Wyoming	Give Name	(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22- 15-109, no identification shall be required when: (i) Voting in person or by mail after having registered in person; or (ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election. (In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)	Wyo. Stat. Ann. § 22-3-118

APPENDIX B –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:
Challenges Prevailed:
American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14th Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:
League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

    - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
    - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

***American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[1]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[1] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[2]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[3] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[2] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[3] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[4] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[4] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

Appendix C

Analysis of Effects of Voter Identification Requirements on Turnout

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May 16, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen turnout among those eligible to vote. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater based on specific types of requirements. Critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card, such as a driver's license. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. This report draws from two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (10 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[5] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[5] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I also tested the array of minimum identification requirements to assess whether they posed increasing levels of demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[6]

Analysis of aggregate data

If one treats maximum voter identification requirements as a continuous variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter

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[6] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

identification requirements (r = -.30, p < .05). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant (r= -.20, p = .16). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.2 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, I opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.[7]

Voter identification requirements alone do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county.

I coded the voter identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus I added a variable to reflect the number of days between each state's registration deadline and the election.[8]

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[7] Treating maximum voter identification requirements as a continuous variable yielded results in which voter identification requirements were negatively related to aggregate turnout. Those results can be found in Table A-1 in the Appendix to this report.

[8] For states that had Election Day registration or no registration requirement (North Dakota), I assigned a value of zero to this variable.

Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the median household income for 2002 in each county.[9]

I estimated a series of random effects models to account for the likelihood that data from counties were correlated within each state (for further explanation of random effects and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[10] I allowed the median income variable to have both fixed and random effects in each state to take into account variation in the cost of living in each state. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, two of the four requirements had a small and negative effect on turnout in 2004: matching one's signature and providing a non-photo identification. Taking into account the reference variable of stating one's name, the results indicate that turnout was lower in states that required signature matches or a non-photo identification than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Two contextual factors -- whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate– increased voter turnout. The time between the closing date for registration and the election had a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income had positive effects on turnout. The percentage of African-Americans in the county did not have a significant effect.

The effects of the minimum voter identification requirements were non-existent. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to have a negative effect on turnout, as did the number of days between the closing date for registration and the election.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2),

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[9] To bring the income figures into a scale comparable to those of the other variables, I used the natural log of median household income.

[10] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

showed no significant improvement by including the interactions ($p > 0.05$). I report the coefficients for the models with the interactions in the Appendix in tables A-2 and A-3.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the identification requirements for voting vary, so does turnout. Specifically, in terms of the maximum requirements, the results suggest that requiring a signature match or non-photo identification is negatively related to turnout compared to requiring that a voter state his or her name. But the analysis showed that adding interactions between identification requirements and the percentage of the county that was African-American or Hispanic did not improve the fit of the model to the data.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[11] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[12] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[13] As in the analysis of aggregate data, I coded the voter

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[11] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[12] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

[13] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown

identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.[14]

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less.[15] At the individual level, I controlled for gender, household income, and dummy variables for race/ethnicity, age and education. In terms of race and ethnicity, I created dummy variables to represent whether a voter was Black/non-Hispanic, Hispanic, or Asian (with white/non-Hispanic/other voters as the omitted category for reference purposes). I separated education into five dummy variables: less than high school, high school diploma, some college, college graduate, and graduate training. I omitted the "less than high school" variable from the model for reference purposes. Regarding age, I created four dummy variables to represent 18 to 24 years of age, 29 to 44, 45 to 64, and 65 years and older. I omitted the 18-to-24 category as the reference variable in the model.

Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

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that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[14] Earlier versions of this paper included an individual-level analysis that included the five maximum voter identification requirements combined into a continuous variable. The results of that analysis, which found that voter identification requirements had a negative relationship with turnout, can be found in table A-4 in the Appendix.

[15] Given that the individual-level analysis focused on registered voters (as opposed to the citizen voting-age population in the aggregate analysis), I did not include the closing date for registration as a predictor of turnout in the individual-level analysis.

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 3 here]

The two models in Table 3 use either the maximum or minimum voter identification requirements in each state. The two models generate similar results. In each model, three of the voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. In other words, compared to states that require voters only to state their names, the requirements to sign one's name, provide a non-photo identification, photo identification in the maximum requirements or affidavit in the minimum requires exert a negative influence on turnout.

Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had finished high school. Respondents who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[16] I calculated the probabilities taking into account both maximum and minimum requirements.

[Table 4 here]

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability appear to decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[17] In terms of the

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[16] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[17] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of

minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter identification requirements. But incorporating dummy variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, I divided the sample into sub-samples and re-ran the probit models.

[Table 5 here]

The effects of voter identification requirements were similar for white voters compared to the entire sample, which was not surprising given that white voters comprised 81 percent of the sample. Voters in states where the maximum requirement involved signing one's name, providing a non-photo identification or photo identification were less likely to vote than those in a state that required voters to give their names. Taking into consideration the minimum requirements, this was true only for voters in states that require a non-photo identification or an affidavit. White voters in photo identification states were 3.7 percent less likely to vote than were white voters in states where respondents gave their names. The difference in probability was 4.4 percent for voters in states where an affidavit was the minimum requirement.

Voter identification requirements also influenced turnout among Black voters, but to a lesser extent relative to white voters.

[Table 6 here]

Of the maximum voter identification requirements, only the non-photo identification requirement reduced turnout compared to turnout in states that required voters to state their names. The predicted probability of voting was 5.7 percent lower for Black respondents in states that required non-photo identification. In terms of age, only African-Americans age 65 and older were more likely to vote than respondents in the 18 to 24 referent group. Respondents in all levels of education were more likely to vote than respondents without a high school diploma. Gender, income, living in a battleground state, being a part of the workforce and having been born in the United States also were positive predictors. Recent mobility tended to lower the probability of voting. None of the minimum identification requirements had a significant effect on voting, while most of the remaining variables had effects similar to those in the maximum requirement model.

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all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

Hispanic voters also were less likely to vote in states that required non-photo identification as opposed to stating one's name.

[Table 7 here]

Using the coefficients from Table 7 to calculate predicted probabilities, for both the maximum and minimum requirements, Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. Hispanic voters ages 45 to 64 and 65 and over were more likely to vote than their 18-to-24-year-old counterparts. Education and income also were positive predictors of voting. Interestingly, being a native-born citizen lowered the probability of voting, while native-born citizenship was a positive predictor for African-American voters and was not a predictor at all for white voters. It may be that naturalized citizens of Hispanic descent are more conscious of the value of voting rights than other groups.

Varying voter identification requirements influenced Asian-American voters as well. As with Hispanic and Black voters, Asian-American voters were less likely to turn out in states with non-photo identification requirements than in states where voters gave their names.

[Table 8 here]

Using the probit coefficients to calculate predicted probabilities, Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement. Asian-American voters also were 2.2 percent less likely to vote when signatures were the maximum requirement compared to stating one's name.

In terms of other predictors, there were no significant differences in terms of age or income. In contrast to Hispanic voters, where one was a naturalized or natural-born citizen did not affect the probability of voting. Those with high school or college diplomas or graduate training were more likely to turn out than those with less than a high school diploma. Women and married voters also were more likely to turn out than men and voters who were note married.

Discussion and conclusion

The results presented here provide evidence that as voter identification requirements vary, voter turnout does as well. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

In the aggregate data, requirements that voters match signatures on file, provide a non-photo identification or photo identification had negative effects on turnout compared to requiring that voters state their names. Interactions with specific groups – African-Americans and Hispanics – did not improve the fit of the aggregate data to the models. But differences emerged among specific groups in the individual-level data. The signature, non-photo identification and photo identification requirements all had negative effects compared to the requirement that voters simply state their names. These effects translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For

example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters (the gap widened to 3.7 percent for white voters when comparing photo identification to simply stating one's name).

That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements. This begs the question as to why photo identification requirements did not have a greater influence in 2004. It may have been due to the fact that photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[18] Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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[18] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using the November 2004 Current Population Survey data and voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Of all of the voter identification requirements, only requiring signatures or matching signatures had a significant effect on whether a respondent said he or she was registered to vote in 2004. In each instance the effect was negative.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Leighley, Jan E. and Arnold Vedlitz. (1999). Race, ethnicity, and political participation: Competing models and contrasting explanations. *The Journal of Politics*, 61(4):1092-1114.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

U.S. Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements			
Maximum Requirement		**Minimum Requirement**	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.2 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum and minimum voter identification requirements

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	-1.34**	0.14	-1.36**	0.4
Sign Name	-0.01	0.012	0.002	0.02
Match Signature	-0.03*	0.014	-0.001	0.02
Non-photo ID	-0.04**	0.013	-0.01	0.02
Photo Identification	-0.02	0.019	----	----
Affidavit	----	----	-0.01	0.02
Battleground State	0.04**	0.01	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01	0.04*	0.02
Registration Closing Date	-0.002**	0.0005	-0.003**	0.001
% African-American	0.02	0.01	0.02	0.01
% Hispanic	-0.05**	0.01	-0.05**	0.01
% Age 65 or older	0.82**	0.03	0.82**	0.03
Median Household Income	0.18**	0.01	0.18**	0.01
-2 Log Likelihood	-8953.8		-8946.9	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (one-tailed tests)

Table 3. Probit model of voter turnout.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.11*	0.05	-0.08*	0.04
Match signature	-0.04	0.05	-0.03	0.05
Non-photo ID	-0.16**	0.06	-0.15**	0.05
Photo ID	-0.17**	0.07	----	----
Affidavit	----	----	-0.23**	0.06
Hispanic	-0.08	0.05	-0.08	0.05
African-American	0.24**	0.04	0.24**	0.04
Asian-American	-0.37**	0.07	-0.38**	0.07
Age 25-44	0.004	0.02	0.003	0.02
Age 45-64	0.26**	0.03	0.26**	0.03
Age65+	0.43**	0.03	0.43**	0.03
High School	0.31**	0.02	0.31**	0.02
Some college	0.57**	0.03	0.57**	0.03
College	0.88**	0.04	0.88**	0.04
Graduate School	0.98**	0.05	0.98**	0.05
Household income	0.03**	0.003	0.03**	0.003
Married	0.23**	0.02	0.23**	0.02
Female	0.10**	0.01	0.10**	0.01
Battleground state	0.17**	0.04	0.18**	0.04
Competitive race	0.05	0.06	0.05	0.05
Employed	0.05	0.05	0.05	0.05
Member of workforce	-0.05	0.05	-0.05	0.05
Native-born citizen	0.02	0.04	0.02	0.04
Moved within past 6 months	-0.29**	0.03	-0.29**	0.03
Constant	-0.09	0.10	-0.09	0.09
Pseudo-R-Squared	0.09		0.10	

Notes: N = 54,973 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 4. Predicted probability of voter turnout – full model

	Maximum requirement	**Minimum requirement**
State name	0.917	0.915
Sign name	0.899	0.902
Match signature	(N.S.)	(N.S.)
Non-photo ID	0.890	0.890
Photo ID	0.888	----
Affidavit	----	0.875
Total difference from "state name" to "photo identification" or "affidavit"	0.029	0.040
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Probit model of turnout for White voters.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.10*	0.05	-0.07	0.04
Match signature	-0.04	0.05	-0.01	0.06
Non-photo ID	-0.14**	0.06	-0.14**	0.06
Photo ID	-0.22**	0.08	----	----
Affidavit	----	----	-0.26**	0.05
Age 25-44	-0.01	0.03	-0.01	0.03
Age 45-64	0.25**	0.03	0.25**	0.03
Age65+	0.44**	0.04	0.44**	0.04
High School	0.36**	0.03	0.36**	0.03
Some college	0.64**	0.03	0.64**	0.03
College	0.95**	0.04	0.96**	0.04
Graduate School	1.05**	0.05	1.05**	0.05
Household income	0.03**	0.004	0.03**	0.003
Married	0.27**	0.02	0.27**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.16**	0.04	0.16**	0.04
Competitive race	0.07	0.07	0.07	0.06
Employed	0.08	0.05	0.08	0.05
Member of workforce	0.0003	0.05	0.003	0.05
Native-born citizen	0.08	0.08	0.08	0.08
Moved within past 6 months	-0.28**	0.03	-0.28**	0.03
Constant	-0.23*	0.11	-0.24**	0.10
Pseudo-R-Squared	.10		.10	

Notes: N = 44,760 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

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Table 7. Probit model of turnout for Hispanic voters.

	Maximum Requirements		**Minimum Requirements**	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.20	0.20	-0.19	0.11
Match signature	-0.12	0.20	-0.18	0.12
Non-photo ID	-0.40*	0.20	-0.38**	0.13
Photo ID	-0.13	0.23	----	----
Affidavit	----	----	-0.25	0.16
Age 25-44	0.11	0.09	0.11	0.09
Age 45-64	0.35**	0.10	0.36**	0.10
Age65+	0.38**	0.11	0.40**	0.11
High School	0.18**	0.08	0.19*	0.08
Some college	0.46**	0.07	0.46**	0.07
College	0.63**	0.11	0.64**	0.11
Graduate School	0.72**	0.13	0.73**	0.13
Household income	0.03**	0.01	0.03**	0.01
Married	0.05	0.06	0.05	0.06
Female	0.09*	0.04	0.09*	0.04
Battleground state	0.31**	0.06	0.36**	0.07
Competitive race	-0.06	0.13	-0.05	0.13
Employed	0.13	0.12	0.14	0.12
Member of workforce	0.07	0.13	0.08	0.13
Native-born citizen	-0.18**	0.07	-0.20**	0.07
Moved within past 6 months	-0.38**	0.08	-0.39**	0.08
Constant	0.22	0.27	0.21	0.20
Pseudo-R-Squared	0.08		0.08	

Notes: N = 2,860 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 6. Probit model of turnout for African-American voters.

	Maximum Requirements		**Minimum Requirements**	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.13	0.09	-0.08	0.13
Match signature	-0.05	0.10	-0.17	0.13
Non-photo ID	-0.24**	0.07	-0.14	0.12
Photo ID	-0.10	0.12	----	----
Affidavit	----	----	-0.05	0.19
Age 25-44	-0.004	0.09	-0.004	0.09
Age 45-64	0.12	0.09	0.13	0.09
Age65+	0.30**	0.12	0.31**	0.12
High School	0.24**	0.06	0.25**	0.06
Some college	0.40**	0.07	0.40**	0.07
College	0.69**	0.08	0.68**	0.08
Graduate School	0.99**	0.19	0.98**	0.19
Household income	0.04**	0.01	0.05**	0.008
Married	0.11	0.07	0.11	0.07
Female	0.14**	0.04	0.14**	0.04
Battleground state	0.13*	0.07	0.21**	0.08
Competitive race	-0.10	0.07	-0.16	0.10
Employed	-0.09	0.11	-0.09	0.10
Member of workforce	-0.32**	0.12	-0.31**	0.11
Native-born citizen	0.31**	0.11	0.28**	0.12
Moved within past 6 months	-0.32**	0.06	-0.32**	0.06
Constant	0.16	0.18	0.12	0.17
Pseudo-R-Squared	0.09		0.09	

Notes: N = 5,013 registered voters

$p < .05$* $p < .01$** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 8. Probit model of turnout for Asian-American voters.

	Maximum Requirements		**Minimum Requirements**	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.37**	0.20	-0.26	0.17
Match signature	-0.17	0.22	-0.01	0.21
Non-photo ID	-0.40**	0.21	-0.28*	0.16
Photo ID	-0.30	0.21	----	----
Affidavit	----	----	0.12	0.30
Age 25-44	-0.11	0.23	-0.10	0.23
Age 45-64	0.06	0.26	0.08	0.26
Age65+	0.14	0.36	0.17	0.34
High School	0.54**	0.21	0.55**	0.21
Some college	0.36	0.31	0.36	0.31
College	0.67**	0.22	0.66**	0.23
Graduate School	0.57*	0.25	0.55*	0.26
Household income	0.01	0.01	0.01	0.01
Married	0.34**	0.13	0.34**	0.13
Female	0.16*	0.09	0.16*	0.08
Battleground state	0.29*	0.14	0.23	0.16
Competitive race	0.33*	0.19	0.27	0.22
Employed	-0.24	0.33	-0.25	0.33
Member of workforce	-0.54	0.35	-0.55	0.35
Native-born citizen	0.14	0.12	0.16	0.11
Moved within past 6 months	-0.38*	0.17	-0.39*	0.17
Constant	0.36	0.52	0.29	0.51
Pseudo-R-Squared	0.08		0.08	

Notes: N = 912 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Appendix

Table A-1. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements treated as a continuous variable.

Variable	Unstandardized Estimate	Standard Error
Intercept	-1.33**	0.14
Voter Identification Requirements	-0.01**	0.004
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01
% African-American	0.02	0.01
% Hispanic	-0.05**	0.01
% Age 65 or older	0.82**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.002**	0.001
-2 Log Likelihood	-8970.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111.
* p < .05 ** p < .01 (one-tailed tests).

Table A-2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements and interactions.

Variable	Unstandardized Estimate	Standard Error
Intercept	-1.39**	0.14
Sign Name	-0.02	0.013
Match Signature	-0.03*	0.02
Non-photo ID	-0.05**	0.01
Photo Identification	-0.05**	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01
% African-American	-0.02	0.03
% Hispanic	-0.22**	0.10
% Age 65 or older	0.8**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.002**	0.001
Signature*African-American	0.02	0.04
Match Signature*African-American	0.16**	0.07
Non-photo ID*African-American	0.03	0.03
Photo ID*African-American	0.20**	0.05
Signature*Hispanic	0.14	0.09
Match Signature*Hispanic	-0.01	0.11
Non-photo ID*Hispanic	0.20**	0.09
Photo ID*Hispanic	0.03	0.11
-2 Log Likelihood	-8966.7	

Coefficients are restricted maximum likelihood estimates. N = 3,111.
* p < .05 ** p < .01 (one-tailed tests).

Table A-3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements and interactions.

Variable	Unstandardized Estimate	Standard Error
Intercept	-1.39**	0.14
Sign Name	0.0003	0.016
Match Signature	-0.001	0.02
Non-photo ID	-0.02	0.02
Affidavit	-0.02	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.02
% African-American	-0.02	0.02
% Hispanic	-0.19**	0.08
% Age 65 or older	0.82**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.003**	0.001
Signature*African-American	-0.007	0.03
Match Signature*African-American	0.15**	0.05
Non-photo ID*African-American	0.04	0.03
Affidavit*African-American	0.18**	0.05
Signature*Hispanic	0.12	0.08
Match Signature*Hispanic	-0.03	0.11
Non-photo ID*Hispanic	0.17*	0.08
Affidavit*Hispanic	-0.04	0.10
-2 Log Likelihood	-8960.8	

Coefficients are restricted maximum likelihood estimates. N = 3,111.
* p < .05 ** p < .01 (one-tailed tests).

Table A-4. Probit model of voter turnout treating maximum voter identification requirements as a continuous variable.

Variable	Unstandardized Estimate	Standard Error
Voter Identification Requirements	-0.04**	0.02
Hispanic	-0.09	0.05
African-American	0.24**	0.04
Asian-American	-0.38**	0.07
Age 25-44	0.005	0.02
Age 45-64	0.26**	0.03
Age65+	0.43**	0.03
High School	0.31**	0.02
Some college	0.57**	0.03
College	0.87**	0.04
Graduate School	0.98**	0.05
Household income	0.03**	0.003
Married	0.23**	0.02
Female	0.10**	0.01
Battleground state	0.19**	0.04
Competitive race	0.04	0.05
Employed	0.05	0.05
Member of workforce	-0.05	0.05
Native-born citizen	0.02	0.04
Moved within past 6 months	-0.29**	0.03
Constant	-0.08	0.10
Pseudo-R-Squared	0.09	

Notes: N = 54,973 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

APPENDIX D

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice.* 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics,* 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics.* 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review.* 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly.* 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------ "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice.* 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review.* 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy.* 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections.* Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective.* Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications; 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science.* 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------- "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------ "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------ "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------ "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------ "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------- *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------- "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------ "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------ "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------ "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------ *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------ *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------ "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------ "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces,* 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review.* 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix E

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

FINAL DRAFT
For Review by the Standards Board and Board of Advisors

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

May 16, 2006

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The Research Team

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

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

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

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

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REVISED FINAL DRAFT
For review by the EAC Advisory Boards

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

- Opponents seek to forestall more stringent identification requirements, such as for government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate and investigates whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout, and important first step in assessing tradeoffs between ballot security and ballot access. The aim is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis was conducted to examine the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:[1] the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also consides some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.[2] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, although it used different statistical methods and two different sets of data on turnout in 2004 election, it points to the same general finding. As discussed at greater length in the appendix to this report, stricter voter identification requirements were correlated with reduced turnout in the models employed.[3] As explained below, these models find that a statistically significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible

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[1] See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

[2] The EAC has contracted with other researchers to study vote fraud issues.

[3] Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*.

voters, however, the tradeoffs between ballot security and ballot access cannot be assessed fully.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.[4] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

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[4] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names. With the addition of the registration closing data to the aggregate analysis, photo id is no longer a

significant predictor of turnout. Signature match and non-photo id remain significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

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The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for

example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[5] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls

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[5] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
    I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors:

the convenience of the voter, the total time allowed to evaluate ballots[6], and the safe harbor provision in presidential elections.

5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more uncertain.

SUMMARY OF RESEARCH

Background and Approach of the Study

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether the vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the

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[6] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.

- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with <u>medium levels of income</u> and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics.* 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in <u>lower</u> socio-economic status.

- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior.* 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.
- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.

- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.*, 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [7] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[8]

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[7] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

[8] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[9] Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter

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[9] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[10] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.[11] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[12]

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[10] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[11] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

[12] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[13]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[14]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[15] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.
5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[16]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it,

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[13] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[14] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[15] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[16] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

Voter ID and Turnout

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004.These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[17] Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.[18]

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum

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[17] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

[18] As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.[19] Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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[19] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

TABLE 1 – Voter ID Requirements[20]

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

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[20] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .05$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ($r= -.20$, $p = .16$). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.2 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.4 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.[21]

Voter identification requirements are just one factor that may affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American [22]
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

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[21] The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

[22] The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that voter identification requirements such as signature matching, a non-photo ID or a photo ID are associated with lower turnout than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election. [23]

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum

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[23] This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

requirements, a signature match, non-photo identification or photo identification were correlated with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.[24] Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[25] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens; the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey. In addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have

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[24] For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[24] Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

[25] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

influenced turnout in 2004.[26] The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[27]

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.[28] Table 3 below shows predicted probabilities (calculated from the probit coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.[29] .

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[26] The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

[27] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[28] A probit model is a popular specification of a generalized linear regression model, using the probit link function.

[29] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

Table 3. Predicted probability of voter turnout – all voters

	Maximum requirement	**Minimum requirement**
State name	91.7%	91.5%
Sign name	89.9%	90.2%
Match signature	Not significant	Not significant
Non-photo ID	89.0%	89.0%
Photo ID	88.8%	---
Affidavit	----	87.%5
Total difference from "state name" to "photo ID" or "affidavit"	**2.9%**	**4.0%**
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[30] In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

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[30] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.[31] The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

Varying voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

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[31] Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

In the aggregate data, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names.

The signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names. That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*).. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.[32] Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL

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[32] Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at

the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased. [33]

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents

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[33] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:57 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: PV Final Draft for Review by Advisory and Standards Boards

Karen Lynn-Dyson
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:55 AM -----

"Tom O'neill"
[redacted]
05/12/2006 04:51 PM

To klynndyson@eac.gov
cc [redacted], "Tim Vercellotti" [redacted]
Subject PV Final Draft for Review by Advisory and Standards Boards

Karen,

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

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

Thanks for your guidance.

Tom O'Neill

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

May 12, 2006

Submitted by

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

The Moritz College of Law, The Ohio State University

FINAL DRAFT
For Review by the Standards Board and Board of Advisors

Report to the U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

CONTENTS

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

EXECUTIVE SUMMARY

Background and Methodology

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

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

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

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

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

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

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

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, we:

1. Surveyed 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.[4]
3. Analyzed statistically provisional voting data from the 2004 election to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approached to voter identification.
4. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

KEY FINDINGS

Variation among the states

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

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

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

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

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

Variation within states

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

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

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

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

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

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

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

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

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

The lessons of litigation

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

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

States move to improve their processes

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

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

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

SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

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

Take a quality-improvement approach

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

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

Emphasize the importance of clarity

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

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

Court decisions suggest areas for action

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

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

Assess each stage of the provisional voting process

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

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

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

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

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

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

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

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

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

Final observation

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

Provisional Voting in 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other influences decreasing consistency among the states include:

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

- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, ans some required provisional voters to execute an affidavit. [15]
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office

- Voter registration databases provided information that reduced the number of provisional ballots counted.[16] In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots. [17]

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

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

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

  - In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.[18]

- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots. [19]
  - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks[20].
  - Those states that permitted less than one week counted an average of 35.4% of their ballots.
  - States that permitted between one and two weeks counted 47.1%.
  - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast[21].
  - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

Variation Within States

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

Election Line reported that:

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

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

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

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

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

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

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

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

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

Effectiveness of Provisional Voting

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

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

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

Estimates of Votes Lost In 2000 Presidential Election

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

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

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

Legislative Response

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

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

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

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

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

Litigation

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

This litigation was significant nonetheless.

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

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

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

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

RECOMMENDATIONS

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

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

Recommendations for Best Practices

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

Self-evaluation of Provisional Voting –4 Key Questions

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

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?

2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?

3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

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

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

Best Practices For Each Step In The Process

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

The Importance of Clarity

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

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.[27] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.

- States should provide poll workers standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[28]

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

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

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

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

A. Registration and Pre-Election Information for Voters

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

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency. " [31]

2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[32]

3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

B. At the Polling Place

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

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

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

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

[32] The Century Foundation, op. cit.

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[33] Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." [34] A state statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [35] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[36] States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

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[33] 8 Colo. Code Regs. § 1505-1, Rule 7.1.
[34] 2005 N.M. Laws 270 page no. 4-5.
[35] Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.
[36] Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j.Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

C. Evaluating Voter Eligibility and Counting Provisional Ballots

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

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

2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct. [40] While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the

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[37] The Century Foundation, op. cit.

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

[39] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)_(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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

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

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. [41] Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, If a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[42]

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

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

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

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

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

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

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

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

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

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

2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.

3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

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

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

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

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

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

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

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

ATTACHMENT 1 – Data Sources for Classification of the States

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

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

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

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

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

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

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

New vs. Old States

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

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

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

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

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

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

Table 1
CATEGORIZATION OF STATES – Old and New

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

Statewide List of Registered Voters

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

Out-of-Precinct Ballots

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

Table 2
CATEGORIZATION OF STATES – Counting Out-Of-Precinct Ballots

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

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

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

Verification Method

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

Table 3
CATEGORIZATION OF STATES -- Ballot Evaluation Methods

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

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

Data Collection

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

Table 4
Updated information by State

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

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

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

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

Data Differences

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

Table 5
Data Differences with the Election Day Study

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

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

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:56 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Voter ID Report and Appendices

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:54 AM -----

"Tom O'neill"
[redacted]
05/08/2006 07:15 PM

To [redacted]
cc [redacted]
Subject Voter ID Report and Appendices

Karen,

Attached is the final draft report on our Voter ID analysis, revised to incorporate the comments made by the EAC at and after our meeting in Washington and the new statistical analysis performed by Tim Vercellotti, which I sent you last Friday. Included in the attached file are about 60 pages of appendices. You may or may not want to distribute all the appendices to the reviewers who will take part in Thursday's conference call. They might find Appendix A useful; it provides a detailed summary of the actual statutory language on Voter ID in each of the states. The other appendices, which are called for as deliverables in the contract, provide worthwhile information for the record, but are not likely to offer material for the reviewers to focus on.

When it comes time to distribute this material to the advisory boards before our meeting with them in May, once again you may want to exercise judgment about how much of it is likely to prove of interest to them.

We look forward to Thursday's teleconference.

Tom O'Neill

VoterIDReport0508.doc

REVISED FINAL DRAFT
05/08/06

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

This report to the United States Election Assistance Commission (EAC) analyzes the effects of voter identification requirements on turnout in the 2004 election and makes recommendations for best practices to evaluate proposals for voter ID requirements. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a draft report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

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

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. They are progressively more rigorous based on the demands they make on voters.[1] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity,

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[1] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, we drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints on voter ID requirements.

Findings

Our analysis of data from the 2004 election indicates that the form of identification required of voters affects turnout. Lack of ID can keep voters from the polls or prevent them from casting a regular ballot if they go to the polling place.[2] This finding emerged from both the analysis of aggregate, county-level data and the individual-level data of the Current Population Survey. The overall effect for all registered voters was fairly small, but statistically significant.

Voter turnout in 2004 was lower in states where voter identification requirements were more demanding. The data show a general movement toward lower turnout as voters are required to present levels of proof of their identify.

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[2] It also seems reasonable to conclude that in states that require an identity document to vote, more voters –those lacking the required ID—will cast provisional ballots. This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.

The aggregate data show that 60.9 percent of the estimated citizen voting age population turned out in 2004. An average of 64.6 percent turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification, a reduction of 6.5 percentage points. That figure, however, probably overstates the effect of voter ID requirements since the inclusion of other factors in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of other factors, the analysis supports the hypothesis that as voter identification requirements increases, turnout declines.

The effects were more pronounced for some specific subgroups. Hispanic voters, the poor and those who did not graduate from high school appear to be less likely to vote as the identification requirement becomes more demanding. The analysis for some other demographic groups illustrate the range of effects predicted for more rigorous voter ID requirements:

Race or Ethnicity

- In the individual-level data for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of identification requirements.
- More rigorous ID requirements did not have a statistically significant effect when looking at all African-Americans, but
- African-American voters from households below the poverty line were 7.5 percent less likely to vote as the ID requirements varied from stating one's name to providing photo identification.

Income

- Citizens from poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.

Education

- Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the requirements ranged from stating one's name to providing photo identification.

Age

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Turnout by young (18-24) African-American voters in states that required a government-issued photo ID was about 10% less likely to vote than in states where they had only to state their name.
- The elderly, while they would be slightly less likely to vote as the requirements changed from stating name to providing photo ID, would not necessarily be affected in the dramatic manner predicted by opponents of photo identification requirements.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity.[3] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

The current lack of understanding of precisely how voter ID requirements affect turnout can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the

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[3] The EAC has contracted with other researchers to study vote fraud issues.

2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[4] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements affect the decision by potential voters to go or stay away from the polls-- are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

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[4] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
    I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[5], and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is

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[5] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

SUMMARY OF RESEARCH

Background and Approach of the Study

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [6] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[7]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[8]

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[6] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

[7] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[8] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and , if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[9] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot

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[9] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

rejected.[10] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here can best be described as the questions policy-makes should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[11]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[12]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[13]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve

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[10] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

[11] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[12] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[13] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[14] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[15]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, nor unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another.

Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex. Moving beyond the statutes and regulations,

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[14] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[15] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places.

Like any system run by fallible people, the voter ID process is subject to variation in practice.[16] Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Under the pressures of Election Day, there is no sure way to report the wide variety of conditions each voter encounters. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. Nevertheless, we are satisfied that the categories used in this report provide a level of discrimination among voter identification regimes sufficient for the analysis that we have undertaken.

TABLE 1 -- Voter ID Requirements[17]

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit

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[16] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

[17] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration
South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable for first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Effect of Voter ID requirements on Turnout

We examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

The Voter ID category assigned to each state is shown in Table 1. We analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [18]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 64.6 percent of the citizen voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis supports the hypothesis that as voter identification requirements become more stringent, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Methods

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had

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[18] See Appendix for the full report: Tim Vercellotti, "Analysis of Voter Identification Requirements on Turnout," The Eagleton Institute of Politics, Rutgers University, May 4, 2006.

to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[19]

We coded the states according to these requirements to test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

Election laws in many states, however, offer exceptions to these requirements if potential voters lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). In recognition of this fact, we also categorized states based on the *minimum* requirement for voting with a regular ballot.

In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states).

We treated the minimum ID in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

We examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the

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[19] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

The aggregate data posed a greater challenge to determine percentage of the voting-age population that has U.S. citizenship. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue we estimated the 2004 citizen voting-age population for each county using a method reported. Therefore, we calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. This method was used in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission.

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. In the statistical analysis, we coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification.

Findings

As the level of required ID proof increases, with photo identification as the most demanding requirement, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.6 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.8 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone do not determine voter turnout. Other factors make a difference in turnout, often a greater difference than the ID requirements. Multivariate models can take into account other predictors of turnout and therefore paint a more complete picture of the relationship between voter identification requirements and turnout. The model used here also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The maximum ID requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. The more senior citizens and African-Americans in the county, the higher the turnout. The percentage of the population living below the poverty reduced turnout. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance (p = .05).

The analysis tested the hypothesis that stricter voter ID requirements dampen turnout among minorities. The data revealed no statistically significant effect on turnout for African-Americans in general. But it revealed a significant reduction in turnout for Hispanics and the poor. The analysis using the minimum ID categories produced similar results.

Analysis of the aggregate data at the county level supports the hypothesis that as voter ID requirements grow stricter, turnout declines. This effect is strongest in counties with concentrations of Hispanic residents or families below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout.[20] Married people are more likely to vote than those who are not married. To explore the effects of voter identification requirements on turnout, examining individual-level data is important.

Individual-level Analysis

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 60.9%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger citizen voting-age population for the

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[20] Education is an important factor in predicting turnout. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[21] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. Excluded are those who said they were not registered to vote and those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Also excluded are respondents who said they were not U.S. citizens.[22]

The dependent variable in these analyses is whether a respondent reported voting in the November 2004 election. As in the aggregate analysis, stricter voter ID requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004.

Table 3 Predicted probability of voter turnout

ID Category	**Maximum requirement**	**Minimum requirement**
State name	91.2%	91.1%
Sign name	90.6%	90.3%
Match signature	90.0%	89.5%
ID	89.4%	88.7%
Photo ID	88.7%	----
Affidavit	----	87.8%
Difference from lowest to highest	**2.50%**	**3.30%**
N	54,973	

Predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

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[21] The Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent.

[22] The CPS did not ask the voting questions of respondents who were not U.S. citizens. The design of the questionnaire skips those questions for non- citizens.

The influence of voter identification requirements, holding all other variables constant, is shown in Table 3 below. The probability of voting dropped with each level of voter identification requirement, with a total drop of 2.5 percent, across the five types of identification for the maximum requirement and 3.3% for the minimum requirements. [23]

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group.

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

- Turnout in states requiring photo ID was predicted as 8.9 percentage points lower than in states where voters simply stated their names.
- The strictest ID requirements reduced the probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out by 7.8 to 9.2 percentage points.
- For African-Americans in the 18- to 24-year-old age group the gap was 10.6 percentage points.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[24] Allowing the maximum voting requirement to

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[23] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of <u>all</u> citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

[24] Respondents were coded as being above or below the U.S. Census Bureau's 2004 poverty line based on their reported annual household income and size of the household.

vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well. Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Conclusions of the Analysis

As the stringency of voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data.

- In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements.
- Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.
- African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education.

- Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification.

- When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters.

- The effects on African-American voters were pronounced for two specific sub-samples, African-American voters living below the poverty line and those in the 18- to 24-year-old age group.
- The elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. Do potential voters who cannot or do not want to meet the identification requirements simply stay away from the polls? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? (Proponents of stricter voter ID requirements might argue that some part of the reduction comes from keeping the truly ineligible from voting.)

Our data alone cannot resolve these questions. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued

photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction,

enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the

legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [25]

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[25] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal*

The dynamics of Voter ID requirements –how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed. [26]

Election Reform, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

[26] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

- **a.** Summary of Voter ID Requirements by State (included)
- **b.** Summary of case law on Voter ID issues (included with this draft)
- **c.** Analysis of Effects of Voter ID Requirements on Turnout (furnished separately)
- **d.** Indexed database of major articles on Voter ID Requirements and related topics
- **e.** Compendium of states' legislation, procedures, and litigation (available as an electronic document)

Appendix A
Summary of Voter Identification Requirements By State

Prepared by
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Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification: (1) A current valid photo identification. (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following: a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification. b. A valid United States passport. c. A valid Alabama hunting or fishing license. d. A valid Alabama permit to carry a pistol or revolver. e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States. f. A valid United States military identification card. g. A certified copy of the elector's birth certificate. h. A valid Social Security card. i. Certified naturalization documentation. j. A certified copy of court records showing adoption or name change. k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card"). (c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b). (e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law. (f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs. Effective Date: June 24, 2003	Ala. Code § 17-11A-1
Alaska	Provide ID	(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including (1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or (2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this	Alaska Stat. § 15.15.225

		paragraph must show the name and current address of the voter. (b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under AS 15.07.050, and did not provide identification as required in AS 15.07.060. (c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot. effective June 17, 2003	
Arizona	Provide ID	B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot: 1. The person shall present either one of the following: (a) A current form of identification that bears a photograph of the person and the name of the person. (b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person. 2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584. Effective Dec. 1, 2003	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	7-5-305. Requirements. (a) Before a person is permitted to vote, the election official shall: (1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list; (2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth; (3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list; (4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate; (5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct. (B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files. (C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct; (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files; (7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and	Arkansas Code Annotated § 7-5-305

		(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card. (B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification. (ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney. (iii) The prosecuting attorney may investigate possible voter fraud; and (9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the preson is a disabled voter and presents himself or herself to vote. Effective: July 16, 2003	
California	Sign Name	Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article. (Enacted in 1994, no amendments since)	Cal. Elec. Code § 14216
Colorado	Provide ID	(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges, * * * (4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title. (19.5)(a) "Identification" means: (I) A valid Colorado driver's license; (II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.; (III) A valid United States passport; (IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state; (V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States; (VI) A valid United States military identification card with a photograph of the eligible elector; (VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector; (VIII) A valid medicare or medicaid card issued by the United States health care	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

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		financing administration; (IX) A certified copy of a birth certificate for the elector issued in the United States; or (X) Certified documentation of naturalization. (b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado. Effective 5/28/2004	
Connecticut	Provide ID	(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate. Effective May 10., 2004	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record. Effective: July 9, 2002	15 Del. Code § 4937
D.C.	Sign Name	(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection. (2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the	D.C. Code § 1-1001.07

		polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection. (3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records. (Effective April 3, 2001)(not added as part of 2005 amendment)	
Florida	Photo ID	101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector. (2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49. **97.0535** (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired: 1. Florida driver's license. 2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles. 3. United States passport. 4. Employee badge or identification. 5. Buyer's club identification. 6. Debit or credit card. 7. Military identification. 8. Student identification. 9. Retirement center identification. 10. Neighborhood association identification. 11. Entertainment identification. 12. Public assistance identification. (b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant: 1. Utility bill.	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535

		2. Bank statement. 3. Government check. 4. Paycheck. 5. Other government document (excluding voter identification card). Version effective 1/1/2005-12/31/2005	
Georgia	Provide ID	(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following: (1) A valid Georgia driver's license; (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification; (3) A valid United States passport; (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state; (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business; (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; (7) A valid Georgia license to carry a pistol or revolver; (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States; (9) A valid United States military identification card; (10) A certified copy of the elector's birth certificate; (11) A valid social security card; (12) Certified naturalization documentation; (13) A certified copy of court records showing adoption, name, or sex change; (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector; (15) A bank statement, or a legible copy thereof, showing the name and address of the elector; (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or (17) A government document, or a legible copy thereof, showing the name and address of the elector. (b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement." effective June, 2003	Ga. Code. Ann. § 21-2-417

Hawaii	Photo ID	(b) The voter shall present valid identification to the official in charge of the pollbook. *Do I Need an I.D. to Vote on Election Day?* **Yes.** Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification. From the 2004 version of the administrative code. **§ 11-136 Poll book, identification, voting.** Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person. After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. Last amended 2003.	Haw. Code. R. § 2-51-80 (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b) Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix HRS 11-136
Idaho	Sign Name	(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book. (2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein. (5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. (Last amended in 1972)	Id. St. §34-1106
Illinois	Give Name	Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he	10 Ill. Comp. Stat. 5/17-9

		shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.	
Indiana	Sign Name		West's Annotated Indiana Code § 3-11-8-25
Iowa	Sign Name	1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form: VOTER'S DECLARATION OF ELIGIBILITY I do solemnly swear or affirm that I am a resident of the .... precinct, ... ward or township, city of ...., county of ...., Iowa. I am a registered voter. I have not voted and will not vote in any other precinct in said election. I understand that any false statement in this declaration is a criminal offense punishable as provided by law. Signature of Voter Address Telephone Approved:	Iowa Code § 49.77

		Board Member 2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials. 3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner. A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote. (From 2004 version of Iowa Annotated Code; effective January 1, 1995)	
Kansas	Sign Name	(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention. (Approved April 14, 2004, 2004 Kansas Laws Ch. 93)	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	117.227 Confirmation of voter's identity Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification. Effective: 7/15/02 31 KAR 4:010. Voter identification cards. Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.	Ky Rev. Stat. Ann. 117.227 31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	A. Identification of voters. (1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place. (2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant	La. Rev. Stat. Ann. 18:562

		shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565. Effective: 1/1/2002	
Maine	Give Name	The voting procedure is as follows. 1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice. (In effect at time of 2003 amendment: 2003, c. 584, § 9)	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	10-310. (a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall: (1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot; (2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or (ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article; (3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register; (4) verify the address of the voter's residence; (5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and (6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.	Md. Elec. Law § 10-310
Mass.	Give Name	Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited. Last amended in 1981	Mass. Ann. Laws 54 § 76
		(5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).	950 Mass. Code Regs. 52.03
Michigan	Sign Name	(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state	Mich. Comp. Laws Ann. §

		identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727. (2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector. The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies. (Effective March 31, 1997)	168.523
Minnesota	Sign Name	(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not	Minn. Stat. § 204C.10

		more than $10,000, or both." (b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth. (c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest. (Effective January 1, 2004)	
Mississippi	Sign Name	* * * When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance. (Effective January 1, 1987)	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list: (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state; (2) Identification issued by the United States government or agency thereof; (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri; (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; (5) Driver's license or state identification card issued by another state; or (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose. (Last amended in 2002)	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address. (From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [Unrelated section was amended in 2005])	Mont. Code. Ann. §13-13-114(1)(a)
Nebraska	Sign Name	(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document. (Last amended in 2003) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter. (Last updated in 2003)	Neb. Rev. Stat. § 32-913 Neb. Rev. Stat. § 32-914
Nevada	Match Sig.	1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2. 2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are: (a) The card issued to the voter at the time he registered to vote; (b) A driver's license; (c) An identification card issued by the Department of Motor Vehicles; (d) A military identification card; or	Nev. Rev. Stat.§ 293.277

		(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture. Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers. b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery. c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5). Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

		case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list. E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot. G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster. (From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)	(Recompiled as §1-12 -7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)
New York	Match Sig.	1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith. 2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election. 3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature. 4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the	N.Y. Law § 8-304 (McKinney)

		space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record. 5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same Last Amended 1986	
North Carolina	Give Name	(a) Checking Registration. –A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook. 1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address. (From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark. The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot. (Effective at time of last update, 1992 H 182, eff. 4-9-93)	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry. (Last amended in 1990) Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours. (Last amended in 1990)	Okla. Stat. Ann. tit. 26, § 7-114 Okla. Stat. Ann. tit. 26, § 7-117
Oregon	Match Sig.	All elections in Oregon are Vote by Mail. An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity (http://www.uhavavote.org/votingguide/votebymail.html) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register. (In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))	
Rhode Island	Give Name	(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form: BALLOT APPLICATION (Poll List) Senatorial District ____________________ Representative District ____________ Voting District ________________________ Election Date ____________________________________ I hereby certify that I am a registered and qualified elector in the above voting district of City of and hereby make application for ballots to be voted at this election. ____ (Signature of Voter) ____ (Residence Address) Number Approved ____ (Supervisor of Election)	R.I. Gen. Laws § 17-19-24

		(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time. (Last amended 2004, Current through January 2005 Session)	
South Carolina	Photo ID	**§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.** When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5- 125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers. Last amended: 1968	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either: (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or	S.D. Codified Laws § 12-18-6.1

		technical school, located within the State of South Dakota. Last amended March 2004	
Tennessee	Provide ID	Identification of eligible voters (a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet. (2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists: (A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar; (B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list; (C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and (D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission. Last amended 2003	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place. (Last amended in 1997)	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges. (b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district. (3) If the election judge determines that the voter is registered: (a) the election judge in charge of the official register shall: (i) write the ballot number opposite the name of the voter in the official register; and	Utah Code Ann. § 20A-3-104

		(ii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter's name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) hand the voter a ballot; and (iv) allow the voter to enter the voting booth. (In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)	
Vermont	Give Name	Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and: (1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting. (2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting (Last amended in 2003)	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him. B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business. If the voter's name is found on the pollbook, if he presents one of the forms of	Va. Code. Ann.

		identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement. (Version in effect as of 2004- effective 4/12/2004)	
Washington	Sign Name	29A.44.201. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. (In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004) 29A.44.210. Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter. The precinct election officers shall then record the voter's name. Effective date: July 1, 2004	Wash. Rev. Code § 29A.44.201 & 29A.44.210
West Virginia	Match Sig.	(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon. * * * (c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the	W. Va. Code § 3-1-34 (a)

		election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter. (In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)	
Wisconsin	Give Name	6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number. (In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)	Wis. Stat. § 6.79
Wyoming	Give Name	(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22- 15-109, no identification shall be required when: (i) Voting in person or by mail after having registered in person; or (ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election. (In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)	Wyo. Stat. Ann. § 22-3-118

APPENDIX B –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004
- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993
- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
    - 14th Amendment EPC: no classification (applied strict scrutiny)
    - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
        - Compelling interests: preventing voter fraud (deemed compelling)
        - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
        - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.
- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004
- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
    - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
    - Substantive due process and equal protection
        - No improper discrimination

  - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
  - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

***American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

<u>Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:</u>

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[27]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[27] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[28]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[29] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[28] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[29] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[30] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[30] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

Appendix C

"Analysis of Effects of Voter Identification Requirements on Turnout"

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PROVIDED EARLIER

APPENDIX D

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?,* 2 Loy. J. Pub. Int. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes,* 59 Disp. Resol. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 Ala. L. Rev. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process,* 22 J. Marshall J. Computer & Info. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet,* 27 Wm. Mitchell L. Rev. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?,* 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?,* 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon,* 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud,* 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution,* 52 U. Pitt. L. Rev. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy.* Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science.* 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences.* 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice.* 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics,* 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics.* 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review.* 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly.* 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------ "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice.* 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review.* 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy.* 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections.* Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective.* Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union.* Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science.* 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------- "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------- "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------- "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------- "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------ "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------ *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------ "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------ "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------ "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------ "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------ *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------ *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------ "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------ "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review.* 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix E

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:56 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised Voter ID Analysis

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:54 AM -----

"Tom O'neill"
[redacted]
05/04/2006 05:00 PM

To [redacted]
cc [redacted], "Tim Vercellotti"
[redacted]
Subject Revised Voter ID Analysis

Karen,

Attached is Tim Vercellotti's Voter ID analysis revised to use Citizen Voting Age population as the base for turnout calculations and to take account of comments or issues raised by the EAC and our Peer Review Group. This draft is for distribution to the reviewers who will meet by teleconference on May 11, at, we understand, 11:30 a.m.

You are receiving this at the same time that it is being distributed to the Eagleton-Moritz team so that the new reviewers will have a week to prepare for our conversation on the 11th. Early next week you will receive a revised summary paper on Voter ID that incorporates the new data and findings in Tim's revised analysis. That too will be for distribution to the new reviewers.

Tom O'Neill

VoterIDAnalysis VercRev0504.doc

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University

May 4, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater for some specific types of requirements. For example, critics argue that requiring voters to produce government-issued photo identification on Election Day is more demanding than, say, requiring that they state their names at the polling place. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I treated the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[2]

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[2] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. I coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the

dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county exerted a positive effect on voter turnout, and the percentage of individuals living below the poverty line had a negative effect. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance ($p = .05$).

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] In addition, adding the interactions to the model resulted in the percentage of Hispanics in the population having a direct and negative effect on turnout. The interactions suggest that voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ($p < 0.005$).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

[Table 3 here]

The effects of the minimum requirements fell short of statistical significance ($p = 0.08$). The battleground state variable continued to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate had no statistically significant effect. As in the maximum identification requirement model, as the percentage of the population that is poor increased, turnout declined. As the percentage of elderly increased, so did turnout. The proportion of African-Americans in the population had a positive effect on turnout, while the percentage of Hispanics did not affect turnout.

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intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.13 [-0.03 (voter id) - 0.13 (Hispanic) + 0.03 (voter id X Hispanic)].

Adding interactive effects to the model resulted in a statistically significant and negative effect of minimum voter identification requirements on turnout. The percentage of Hispanic adults in the county had a significant and negative effect on turnout, and the percentage of individuals below the poverty line continued to have a negative effect. Interactions between the percentages of Hispanics and those below the poverty line and minimum voter identification requirements also were significant. The percentage of African-Americans in the county and the interaction between African-Americans and voter identification requirements were not significant. A chi-square test for the difference in fit between the two models showed that the model with interactions provides a better fit to the data ($p < .025$).

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the demands of voter identification requirements increase, turnout declines. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[5] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[6] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S.

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[5] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[6] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[7] As in the analysis of aggregate data, I coded voter identification requirements for each respondent's state of residence on a scale of one to five, with one representing the least demanding requirement (stating one's name) and five representing the most demanding requirement (photo identification or affidavit).

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes).[8] Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which

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[7] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[8] Asian-Americans are included in the "other non-white races" category. In response to a request from officials at the U.S. Election Assistance Commission who had read an earlier version of this paper and were curious about the experiences of Asian-Americans, I ran models using Asian-Americans as a separate category in addition to the models presented here. Voter identification requirements did not have a statistically significant effect on whether Asian-American voters said they turned out in the 2004 election.

calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[9] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 0.912 for stating one's name to 0.887 for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of .025, or 2.5 percent, across the five types of identification.[10] When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it

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[9] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[10] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest, omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[11] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of Black/Non-Hispanics voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent when the maximum requirement was stating one's name, and the probability dropped 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Breaking down the 18- to 24-year-old age group by race shed additional light on the effects of voter identification requirements on specific groups.

[Table 8 here]

The gap in predicted probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out was 9.2 percent when the identification requirements varied from stating one's name to providing photo identification. The gap was 7.8 percent when taking into account the minimum requirements. The effects of maximum voter identification requirements also were statistically significant for African-Americans in the 18- to 24-year-old age group, with a gap in

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[11] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

the predicted probability of voting of 10.6 percent. Maximum and minimum voter identification requirements were not a significant predictor of voting among Hispanics ages 18 to 24.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[12]

[Table 9 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements). Given that political discourse about voter identification requirements includes concerns about the effects of the requirements on poor and minority voters, I also ran probit analyses for sub-samples of white and minority voters who fell below the poverty line. The voter identification requirements did not exert statistically significant effects on turnout among poor White/Non-Hispanic and Hispanic voters, but did have a significant effect on Black/Non-Hispanic voters who were below the poverty line.[13] Allowing the maximum voting requirement to vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 10 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

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[12] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

[13] The lack of significant effects for poor Hispanic voters is in contrast to the results from the aggregate data analysis. The sub-sample of poor Hispanic voters was small (n = 491), which may have contributed to the lack of statistical significance.

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit. African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters. The effects on African-American voters were pronounced for two specific sub-samples: African-American voters living below the poverty line and those in the 18- to 24-year-old age group. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[14] Or, do the requirements result in some voters

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[14] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not

being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements			
Maximum Requirement		**Minimum Requirement**	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.6 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.69	0.02
Voter ID requirements	-0.01**	0.003	-0.03**	0.004
Battleground State	0.04*	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.48**	0.03	0.50**	0.03
% African-American	0.05**	0.01	0.06	0.03
% Hispanic	-0.02	0.01	-0.13**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8638.0		-8651.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.63	0.02	0.66	0.02
Voter ID requirements	-0.009	0.005	-0.02**	0.006
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.48**	0.03	0.48**	0.03
% African-American	0.05**	0.01	0.04	0.03
% Hispanic	-0.12	0.01	-0.13**	0.04
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	0.01	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8630.8		-8620.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		Minimum requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05* p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model		
	Maximum requirement	**Minimum requirement**
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White/Non-Hispanic voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.795	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 8. Predicted probability of voter turnout – Age groups by race

	White/Non-Hispanic 18 - 24		Black/Non-Hispanic 18 – 24
	Maximum requirements	**Minimum requirements**	**Maximum requirements**
State name	0.844	0.836	0.899
Sign name	0.823	0.818	0.877
Match signature	0.801	0.799	0.852
Non-photo ID	0.777	0.779	0.824
Photo ID	0.752	----	0.793
Affidavit	----	0.758	----
Total difference – lowest to highest	0.092	0.078	0.106
N	3,814		562

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Minimum voter identification requirements were not a significant predictor of voting for Black/Non-Hispanic voters ages 18 to 24. Maximum and minimum voter identification requirements were not a significant predictor of voting for Hispanic voters ages 18 to 24.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – Voters above and below the poverty line

	All voters above the poverty line		**All voters below the poverty line**	**Black/Non-Hispanic voters below the poverty line**
	Maximum requirement	**Minimum requirement**	**Minimum requirement**	**Maximum requirement**
State name	0.920	0.922	0.784	0.833
Sign name	0.915	0.915	0.772	0.816
Match signature	0.909	0.907	0.758	0.798
Non-photo ID	0.903	0.899	0.745	0.778
Photo ID	0.897	----	----	0.758
Affidavit	----	0.891	0.731	
Total difference from lowest to highest	0.023	0.031	0.053	0.075
N	49,935		5,038	1,204

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for white and Hispanic voters who were below the poverty line. Minimum voter identification requirements were not a significant predictor of voting for Black voters below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 10. Predicted probability of voter turnout – By education								
	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:55 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Schedule for completion of Prov. Voting and Voter ID research

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:53 AM -----

"Tom O'neill"
<tom_oneill@verizon.net>
04/27/2006 03:40 PM

To [redacted]
cc [redacted]
Subject RE: Schedule for completion of Prov. Voting and Voter ID research

Thanks, Karen.

Just to be sure that our expectations are clear, I'll summarize the perspective behind the schedule we submitted for the recent extension.

A. Provisional Voting

1. We presented our Provisional Voting report to the commissioners several months ago, revised its organization and clarified findings and recommendations in line with the comments of staff and commissioners, and we researched Tom Wilkey's additional question of the effect of the time for review on the evaluation of provisional ballots, which will be included in the final revision.
2. The final draft will be completed by May 5 .
3. Based on discussions with you and the commissioners we look forward to presenting that revised, final report to the Advisory Board on May 24, following whatever additional review the Commission finds appropriate.
4. Our discussions with Commissioners and staff anticipated that we would make some presentation of the provisional voting work at the Commission's public meeting in June, a presentation that might include revisions occasioned by the comments of the Advisory Board.

B. Voter ID

1. We presented our Voter ID research to the Commissioners in April and are now revising it in line with their comments.
2. That revised research paper will be discussed in mid May by reviewers selected by the Commission. That date was set specifically to allow us to prepare a final report that would be ready for review by the Advisory Board on May 24.
3. We anticipate that the Commission will want the comments of its Advisory Board on the

Voter ID report before it receives it in June. (Indeed, we were advised that the Advisory Board members would be most interested in the accuracy of observations or findings specific to their individual states.)

4. The appropriate conclusion for our work is a presentation of findings and recommendations for both Provisional Voting and Voter ID, 2 closely related topics, to the Commission at its public meeting in late June, just a week before the termination of our contract under the extended schedule.

I hope you'll share this outline of our expectations with the others at the Commission involved in assuring a successful completion of this research and analysis.

Tom O'Neill

-----Original Message-----
From: [redacted]
Sent: Thursday, April 27, 2006 3:08 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Schedule for completion of Prov. Voting and Voter ID research

Tom-

I am certain the provisional voting paper will be presented. The Chairman has asked that the Commissioners have an opportunity to review your corrected and final draft of that document prior to it being presented to the EAC Boards, preferably next week.

Because of the issues surrounding voter identification, I am less certain about the protocol that will be followed. I will ask Tom Wilkey and Julie Hodgkins to offer insights on that matter.

I will also ask them about the protocol to be followed regarding the formal submission and acceptance of both the papers.

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

[redacted]>

04/27/2006 10:26 AM

To [redacted]
[redacted]
[redacted]

SubjectRE: Schedule for completion of Prov. Voting and Voter ID research

Karen,

Thanks for your quick reply.

Am I correct in understanding that the presentation to the Board of Advisors on May 24 will include both the Provisional Voting report and the Voter ID report?

If the Commissioners do not consider the reports at its June meeting, when will it take action to receive and record the reports?

Tom O'Neill

-----Original Message-----
From: [redacted]
Sent: Thursday, April 27, 2006 9:50 AM
To: [redacted]
Cc: [redacted]
Subject: Re: Schedule for completion of Prov. Voting and Voter ID research

Tom-

Just had a good conversation with our folks in the legal department, who as you know, are responsible for coordinating our public meetings.

Original plans had slotted Eagleton for the presentation of its final reports on provisional voting and voter id, at a June public meeting. Those plans have been revised to have Eagleton, instead, present its findings to the EAC Board of Advisors and Standards Board on May 24th.

The details of the Board of Advisors and Standards Board meetings are being finalized this week and early next. I will be certain to get your more details, as I learn of them.

Also, I will get you the details on who will provide the EAC peer review of the Voter ID work, as soon as I have them.

Regards-

(back Karen Lynn-Dyson
Research Manager

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

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Powerpoint presentation for EAC

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:50 AM -----

"Tom O'neill"
[redacted]
04/02/2006 11:58 AM

To [redacted]
cc
Subject Powerpoint presentation for EAC

Karen,

Attached is the Powerpoint presentation we will use as the basis for our presentation tomorrow. I will be bringing a copy on a portable drive to install on the computer to be used for the presentation, but thought it might be convenient to have a copy in advance that you could review and that might be loaded onto the presentation computer before we arrive.

See you about 11. Hope you're having (had?) a good weekend.

Tom O'Neill

Briefinfg040306A.ppt

Briefing for

U. S. Election Assistance Commission

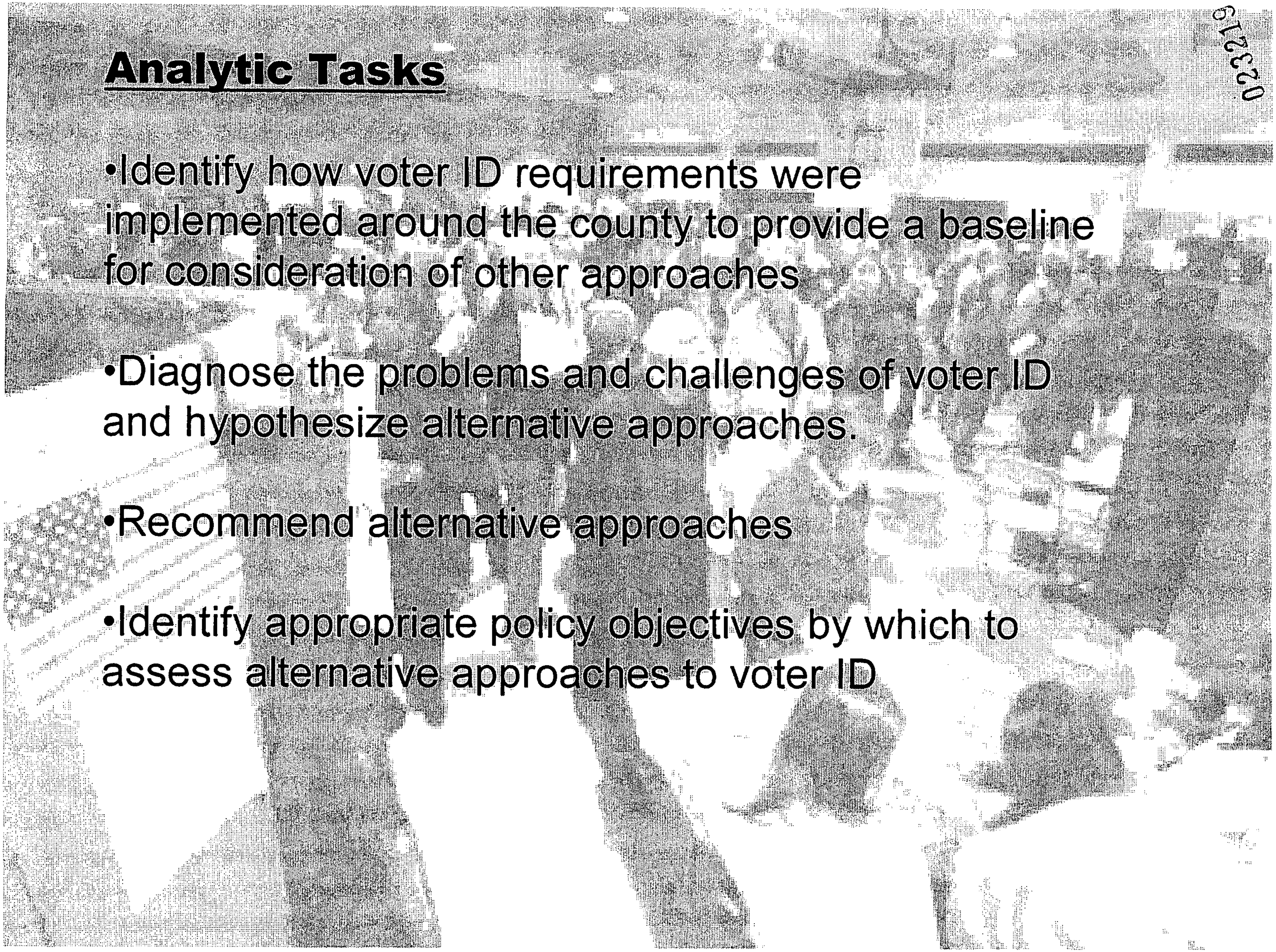
Thomas O'Neill, Project Director
Eagleton Institute of Politics

Dan Tokaji, Assistant Professor of Law
Moritz College of Law,

Tim Vercellotti, Assistant Research Professor
Eagleton Institute of Politics

April 3, 2006

Voter Identification Issues
Analysis
&
Recommendations



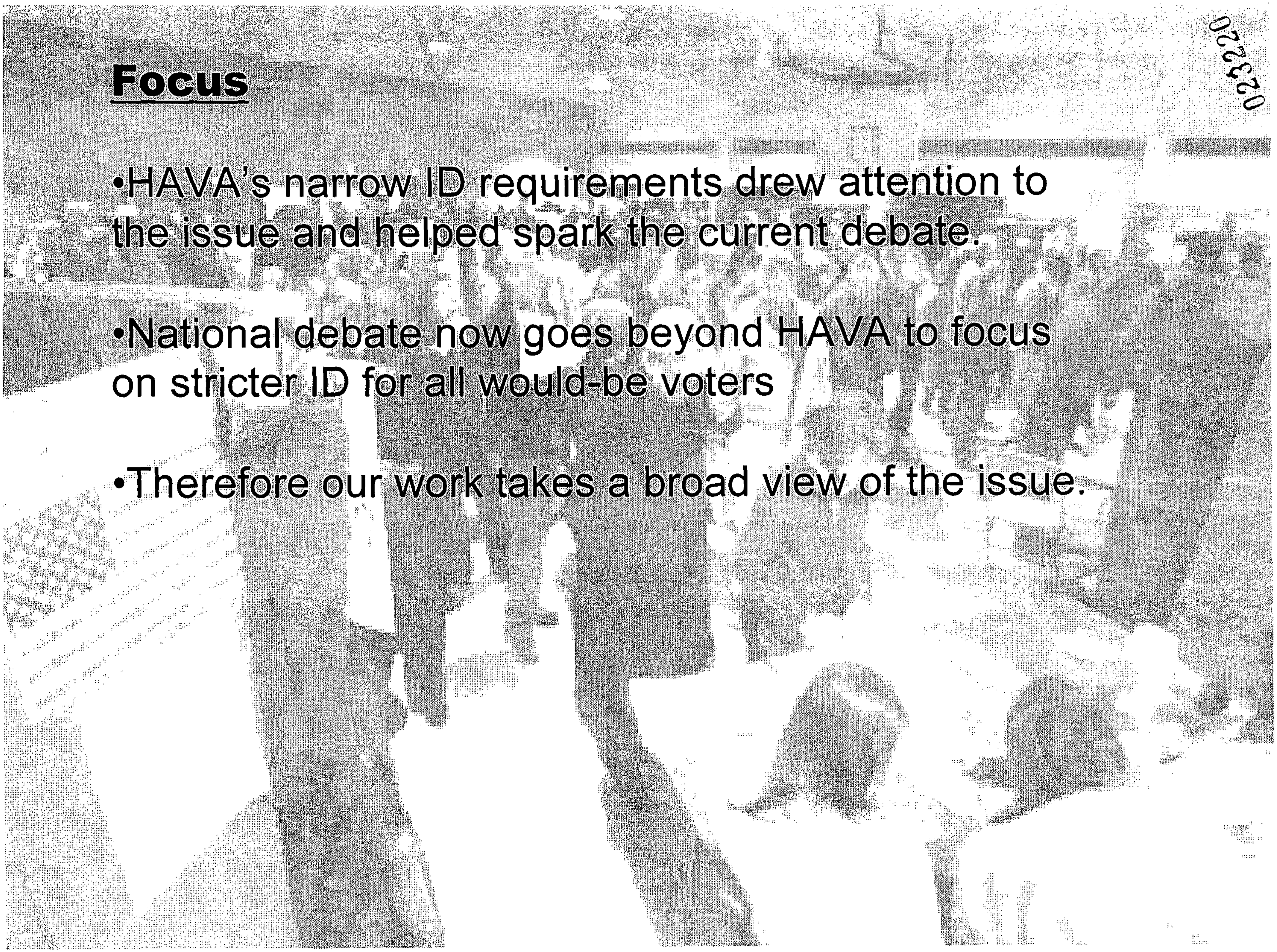
Analytic Tasks

- Identify how voter ID requirements were implemented around the county to provide a baseline for consideration of other approaches

- Diagnose the problems and challenges of voter ID and hypothesize alternative approaches.

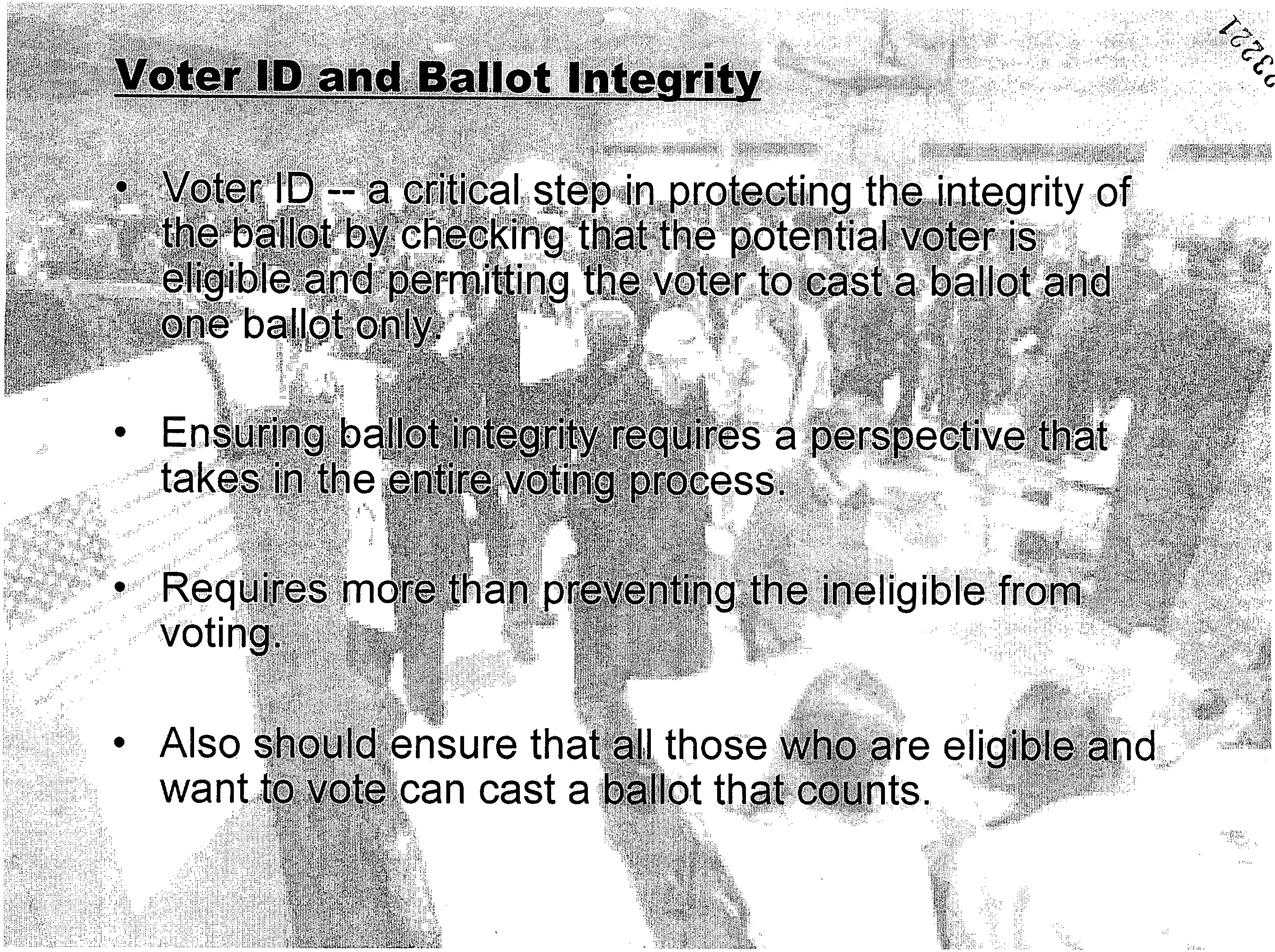
- Recommend alternative approaches

- Identify appropriate policy objectives by which to assess alternative approaches to voter ID



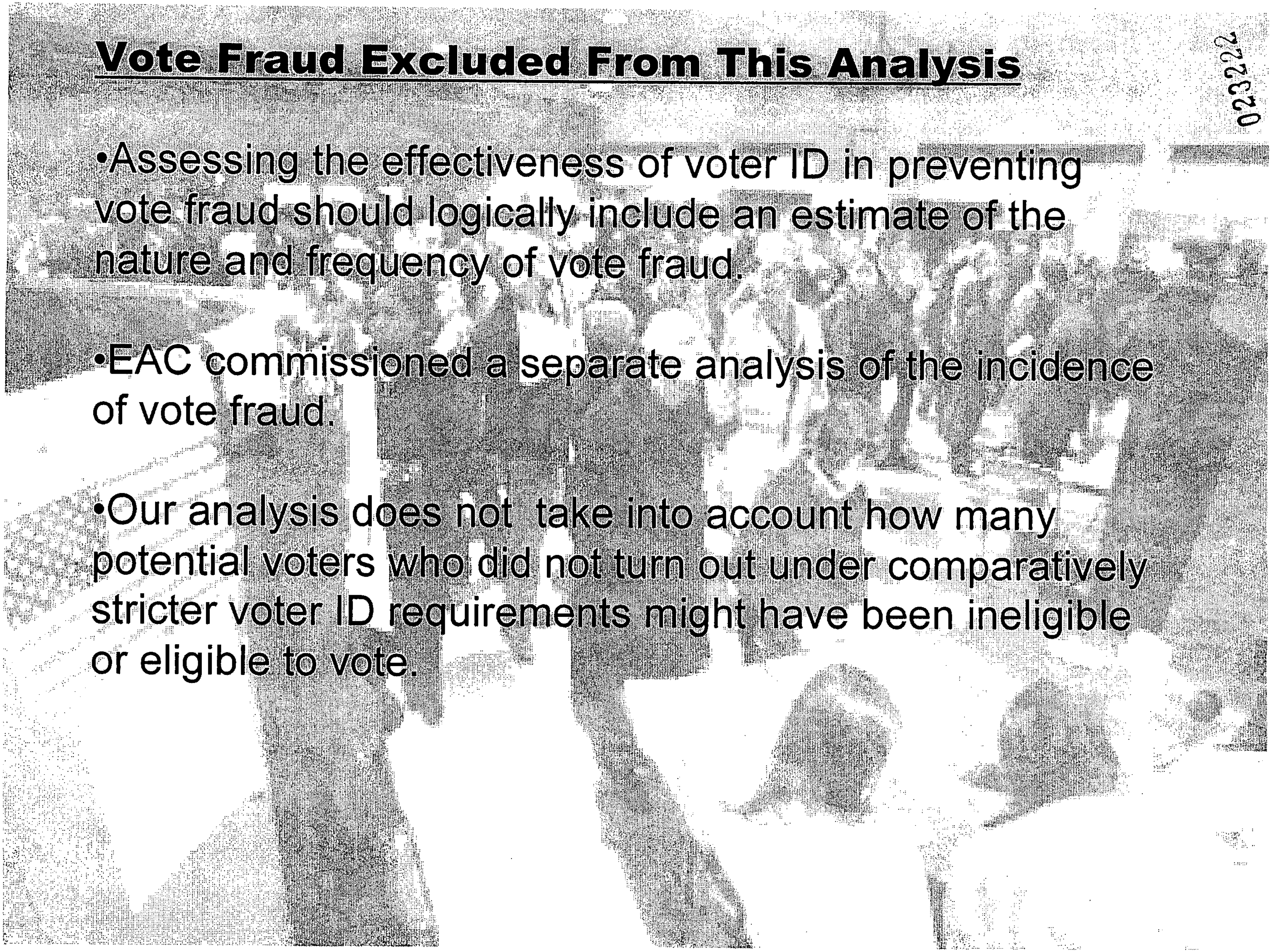
Focus

- HAVA's narrow ID requirements drew attention to the issue and helped spark the current debate.
- National debate now goes beyond HAVA to focus on stricter ID for all would-be voters
- Therefore our work takes a broad view of the issue.



Voter ID and Ballot Integrity

- Voter ID -- a critical step in protecting the integrity of the ballot by checking that the potential voter is eligible and permitting the voter to cast a ballot and one ballot only.
- Ensuring ballot integrity requires a perspective that takes in the entire voting process.
- Requires more than preventing the ineligible from voting.
- Also should ensure that all those who are eligible and want to vote can cast a ballot that counts.

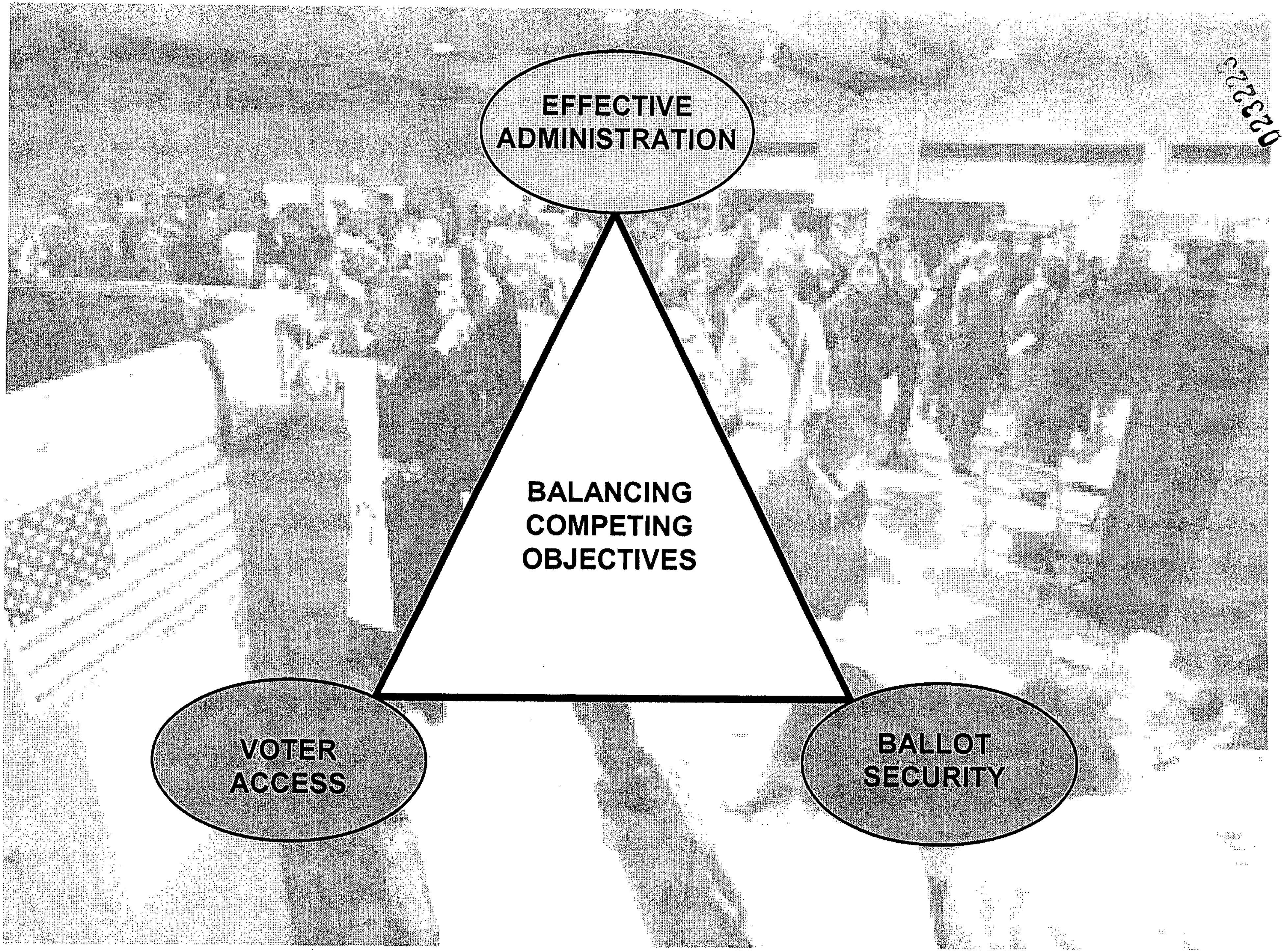


Vote Fraud Excluded From This Analysis

- Assessing the effectiveness of voter ID in preventing vote fraud should logically include an estimate of the nature and frequency of vote fraud.

- EAC commissioned a separate analysis of the incidence of vote fraud.

- Our analysis does not take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

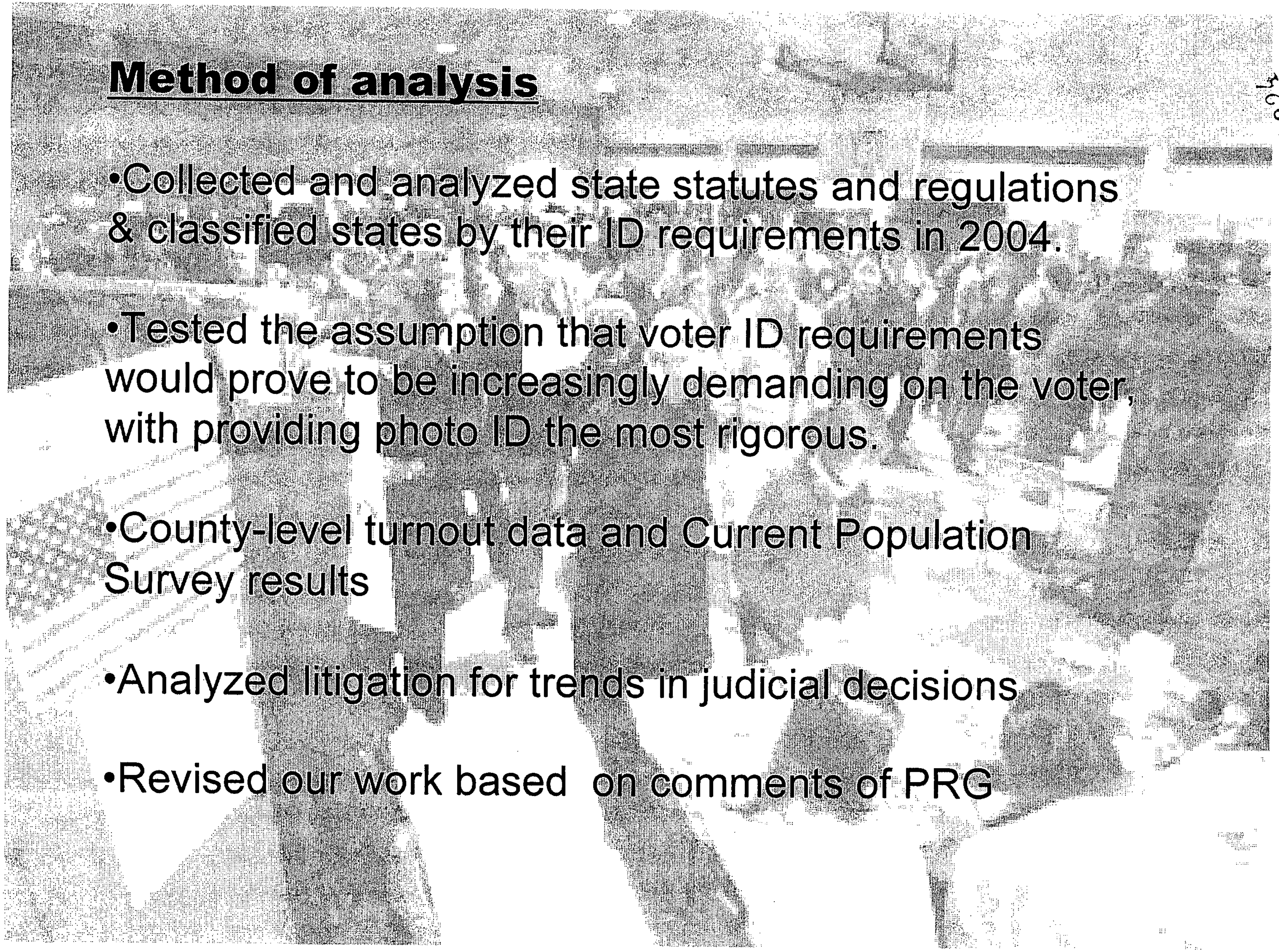


EFFECTIVE ADMINISTRATION

BALANCING COMPETING OBJECTIVES

VOTER ACCESS

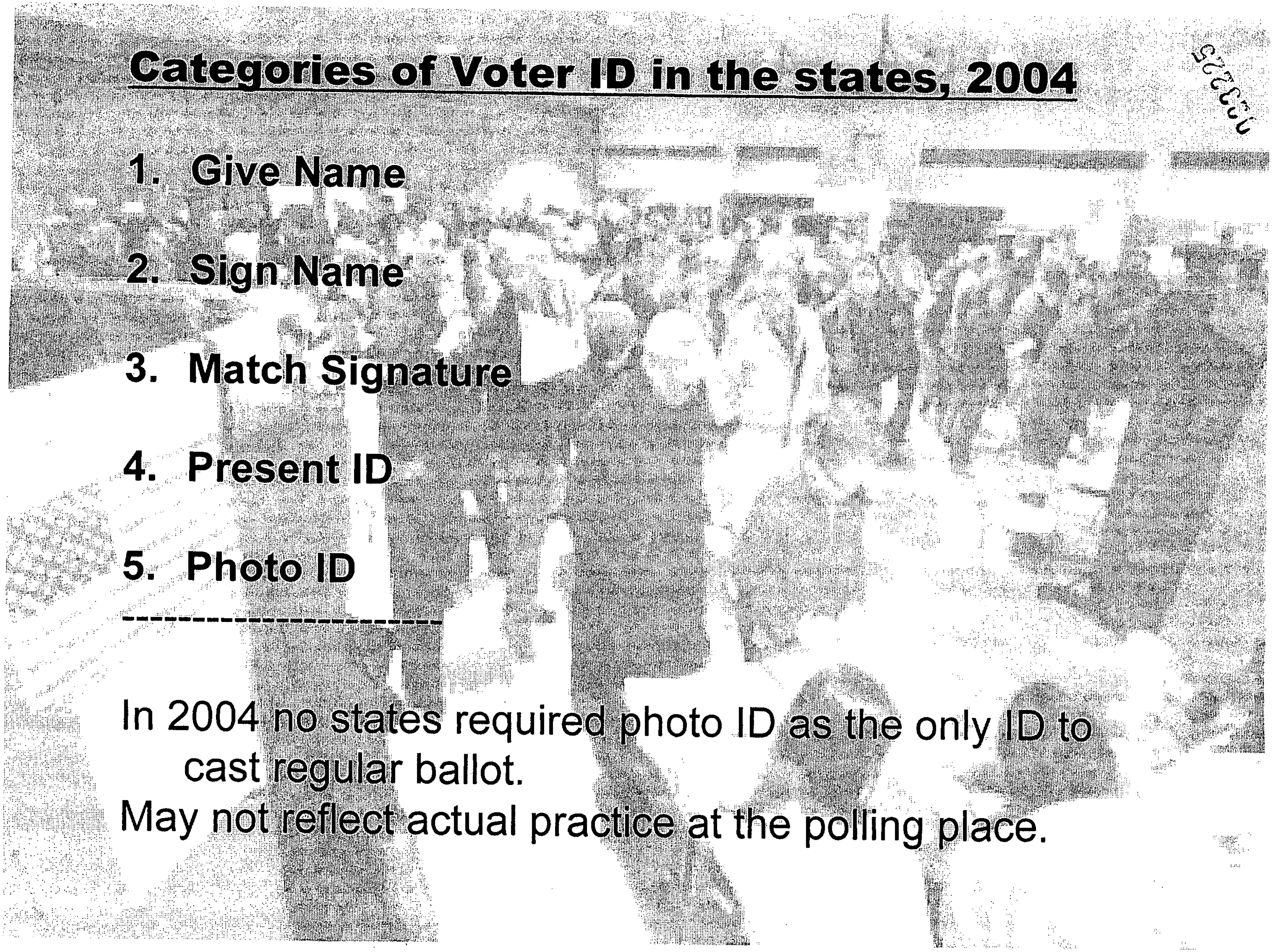
BALLOT SECURITY



Method of analysis

- •Collected and analyzed state statutes and regulations & classified states by their ID requirements in 2004.
- •Tested the assumption that voter ID requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous.
- •County-level turnout data and Current Population Survey results
- •Analyzed litigation for trends in judicial decisions
- •Revised our work based on comments of PRG

Categories of Voter ID in the states, 2004



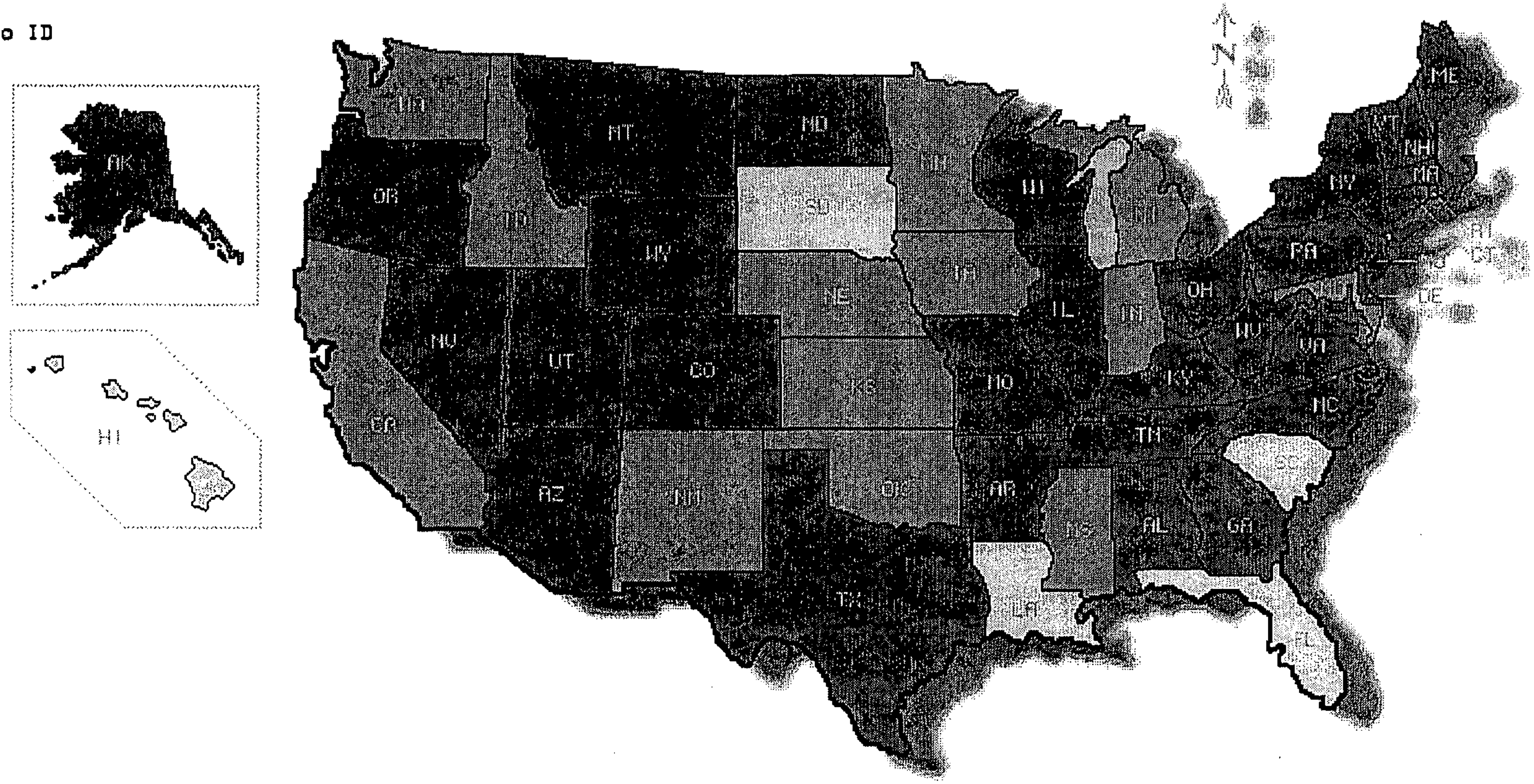
1. **Give Name**
2. **Sign Name**
3. **Match Signature**
4. **Present ID**
5. **Photo ID**

In 2004 no states required photo ID as the only ID to cast regular ballot.

May not reflect actual practice at the polling place.

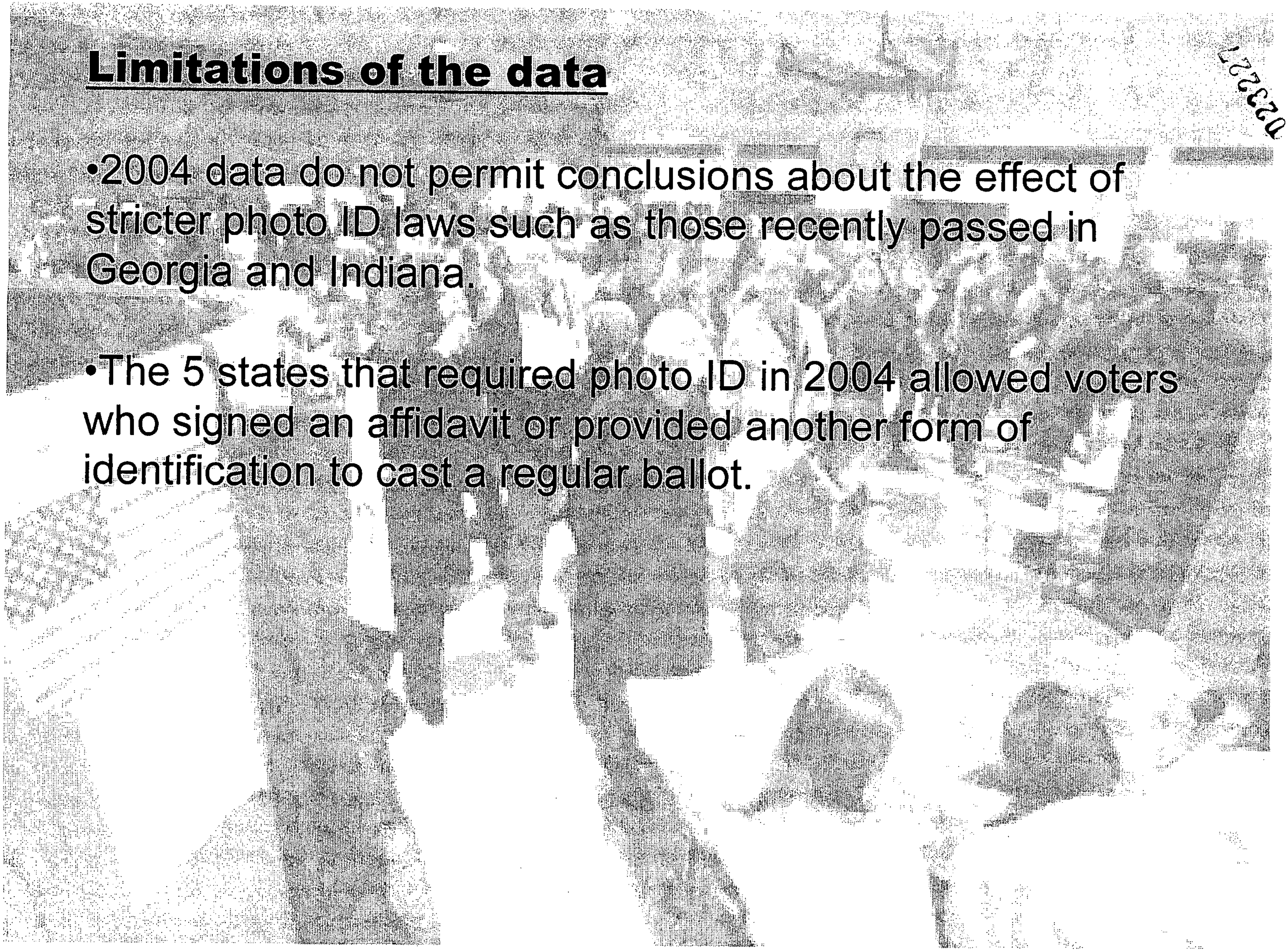
- ● - Give Name
- ● - Sign Name
- ● - Match Signature
- ● - ID
- ● - Photo ID

Voter ID Requirements 2004

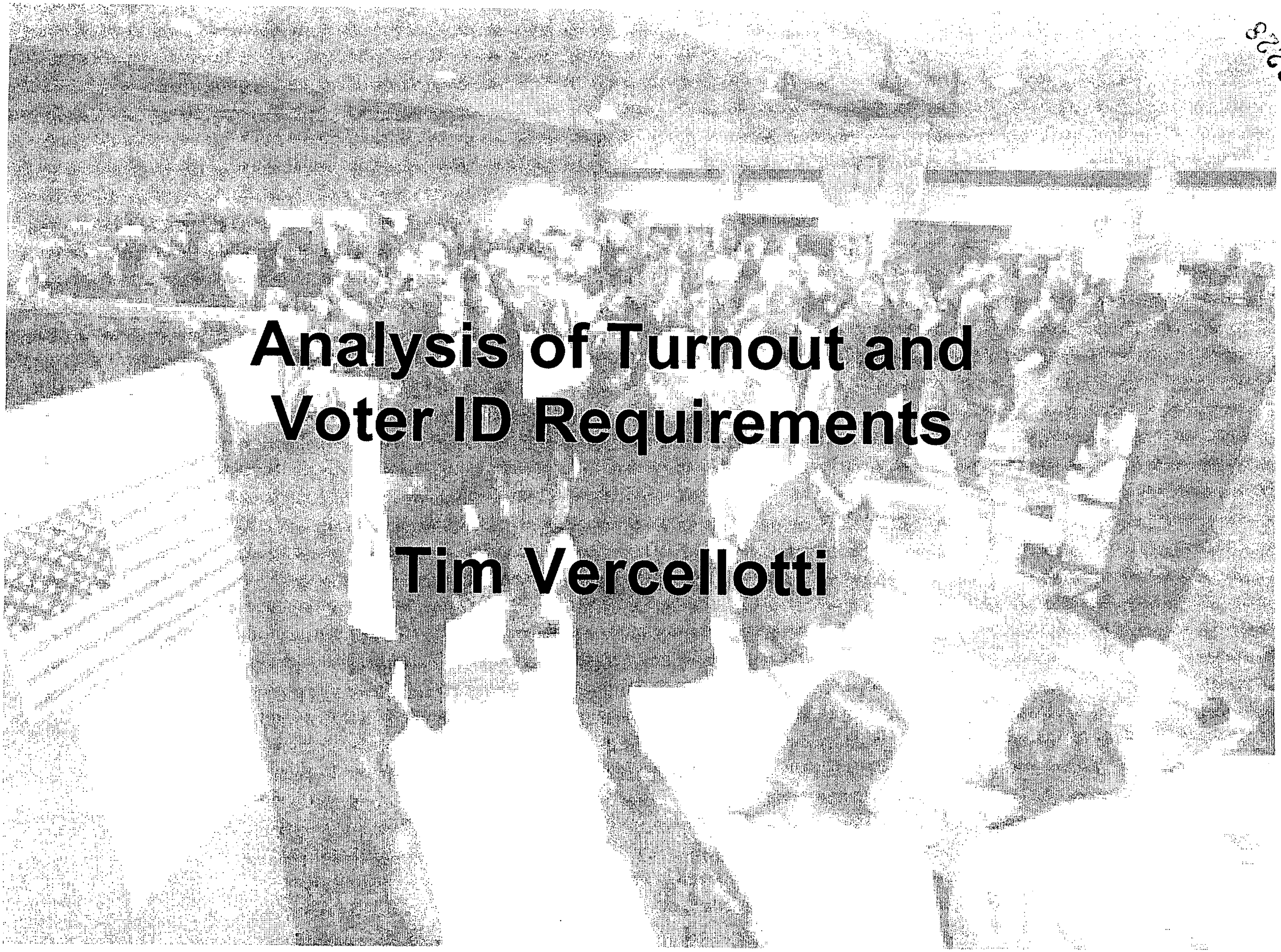


3-27-06

Limitations of the data

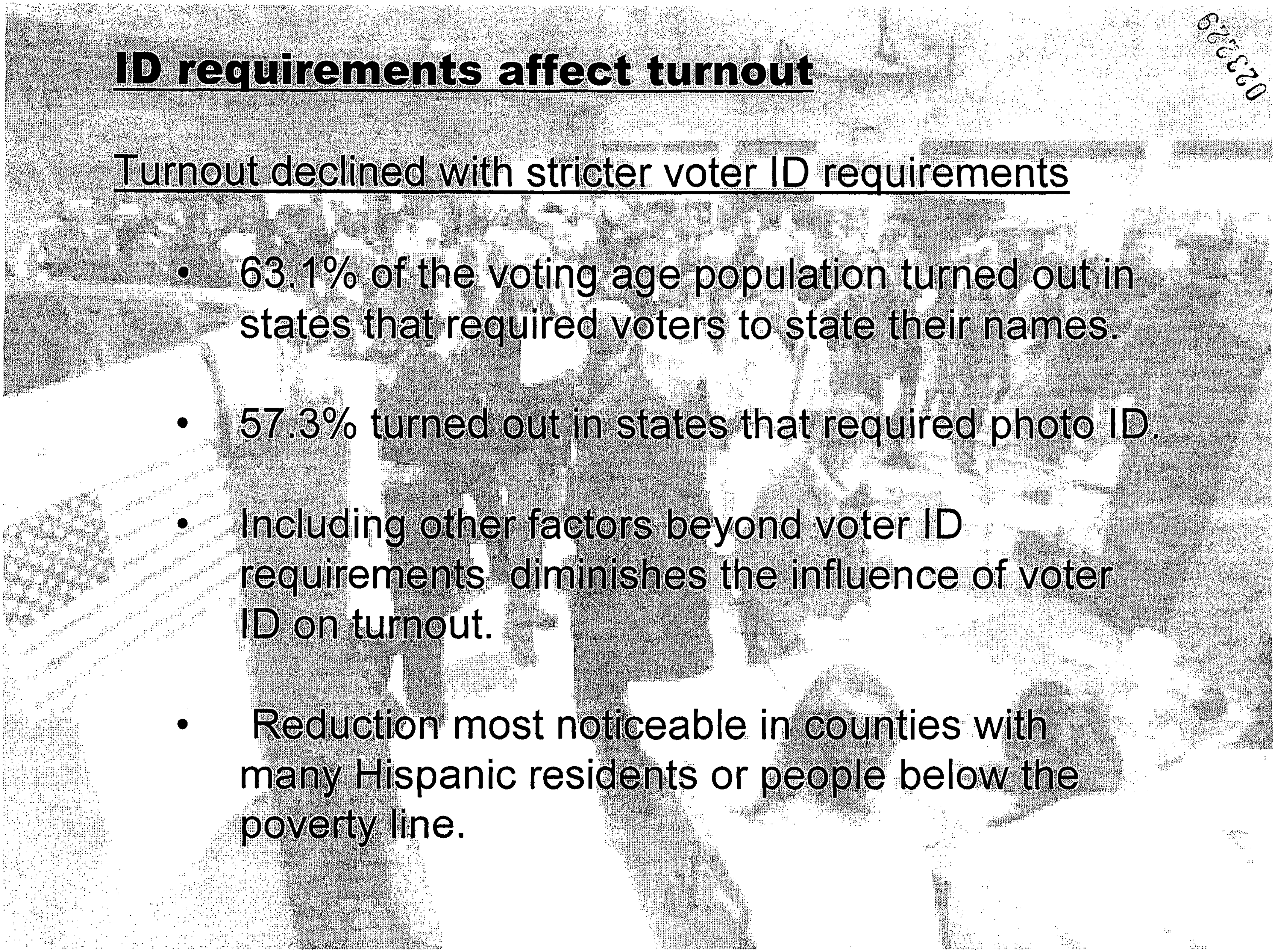


- 2004 data do not permit conclusions about the effect of stricter photo ID laws such as those recently passed in Georgia and Indiana.
- The 5 states that required photo ID in 2004 allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.



Analysis of Turnout and Voter ID Requirements

Tim Vercellotti

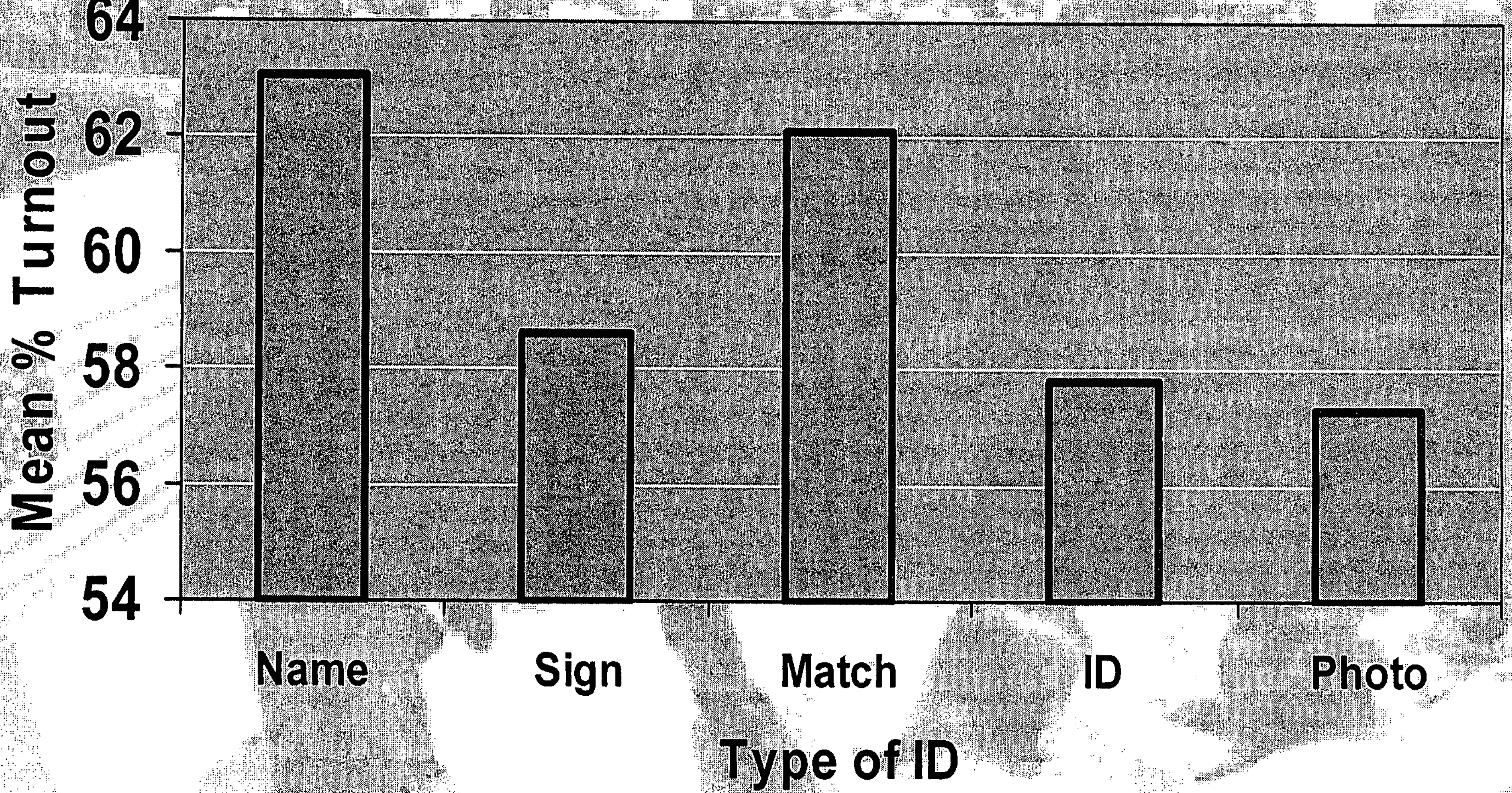


ID requirements affect turnout

Turnout declined with stricter voter ID requirements

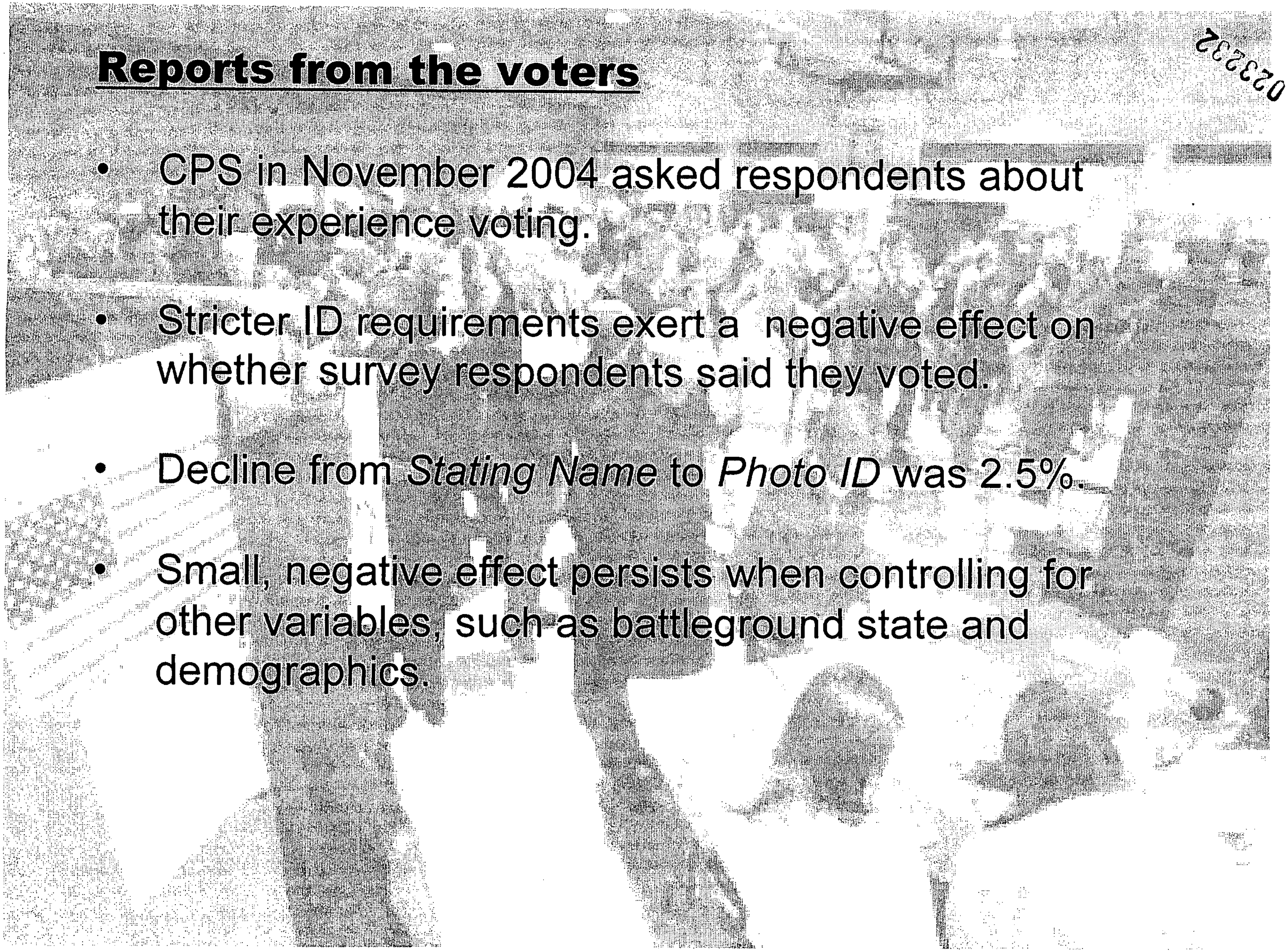
- 63.1% of the voting age population turned out in states that required voters to state their names.
- 57.3% turned out in states that required photo ID.
- Including other factors beyond voter ID requirements diminishes the influence of voter ID on turnout.
- Reduction most noticeable in counties with many Hispanic residents or people below the poverty line.

State Voter ID and Turnout



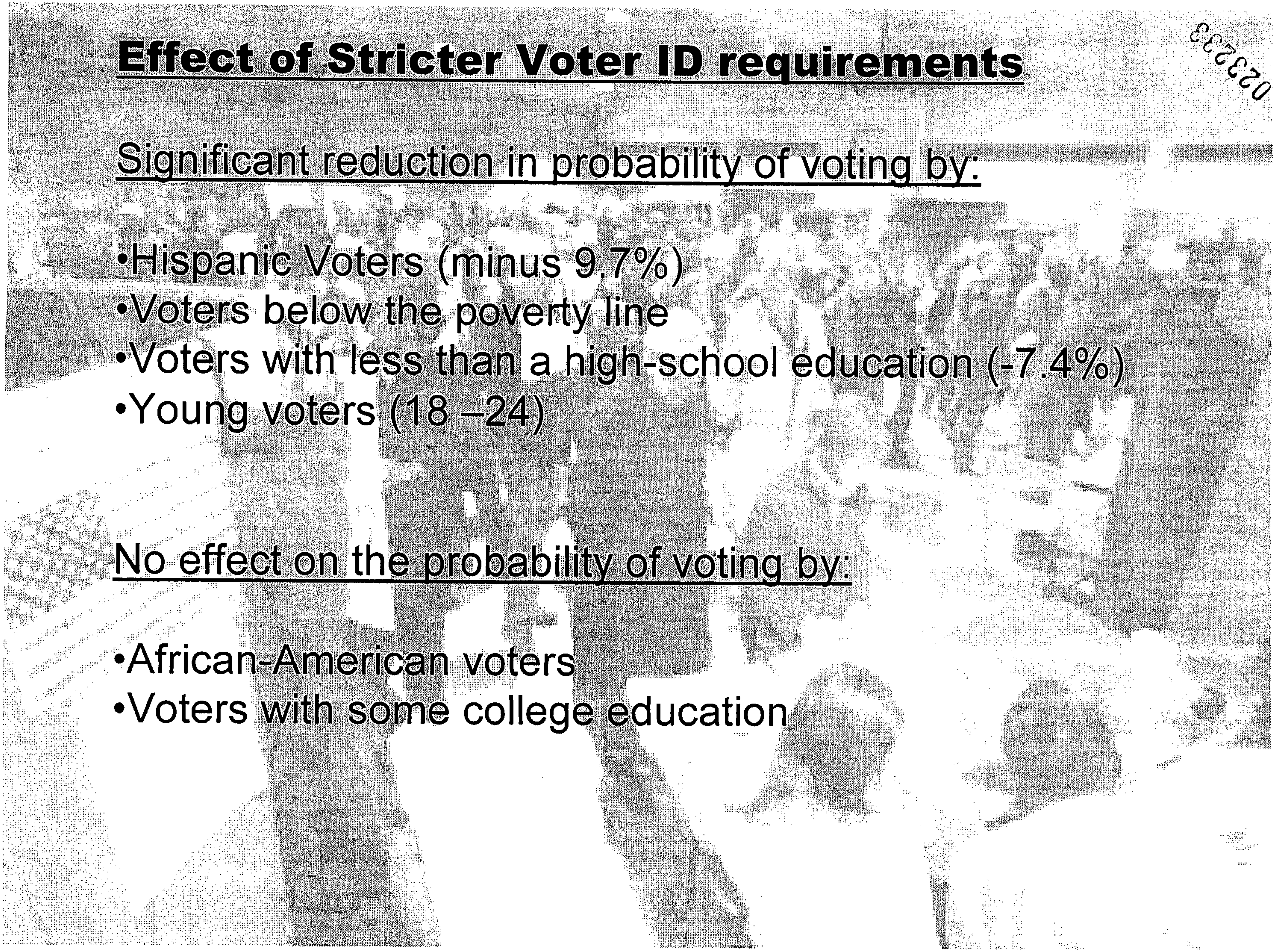
Variation in Turnout Based on Voter ID Requirements

Maximum Requirement		*Minimum Requirement*	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	*Voter Identification Required in the States*	*Mean Voter Turnout for States in that Category*
State Name	**63.1 %**	*State Name*	***61.3 %***
Sign Name	**58.6 %**	*Sign Name*	***60.4 %***
Match Signature	**62.1 %**	*Match Signature*	***59.2 %***
Provide Non-Photo ID	**57.8 %**	*Provide Non-Photo ID*	***57.6 %***
Provide Photo ID	**57.3 %**	*Swear Affidavit*	***58.7 %***
Average Turnout (All States)	**59.6 %**		



Reports from the voters

- CPS in November 2004 asked respondents about their experience voting.
- Stricter ID requirements exert a negative effect on whether survey respondents said they voted.
- Decline from *Stating Name* to *Photo ID* was 2.5%.
- Small, negative effect persists when controlling for other variables, such as battleground state and demographics.



Effect of Stricter Voter ID requirements

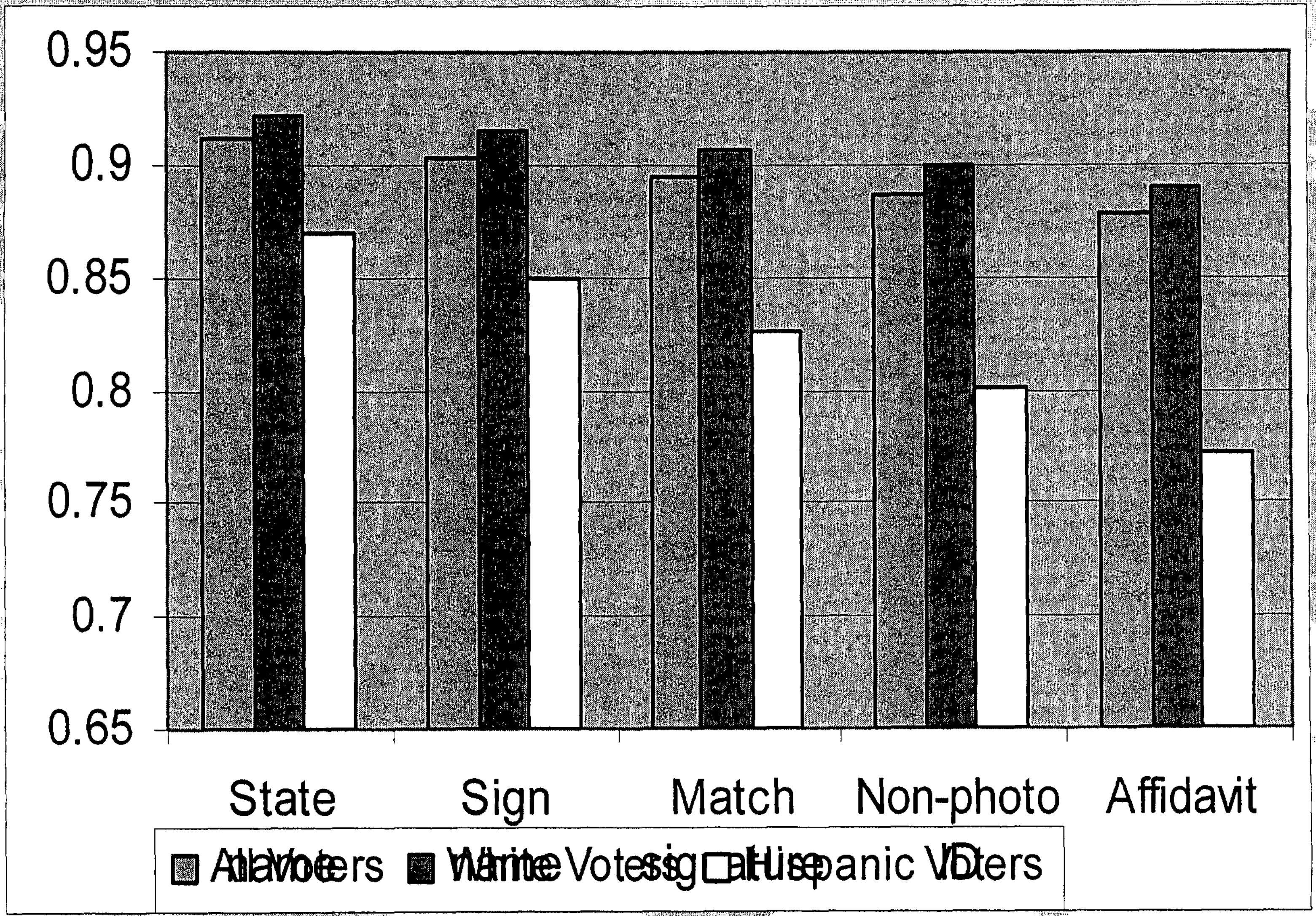
Significant reduction in probability of voting by:

- Hispanic Voters (minus 9.7%)
- Voters below the poverty line
- Voters with less than a high-school education (-7.4%)
- Young voters (18 –24)

No effect on the probability of voting by:

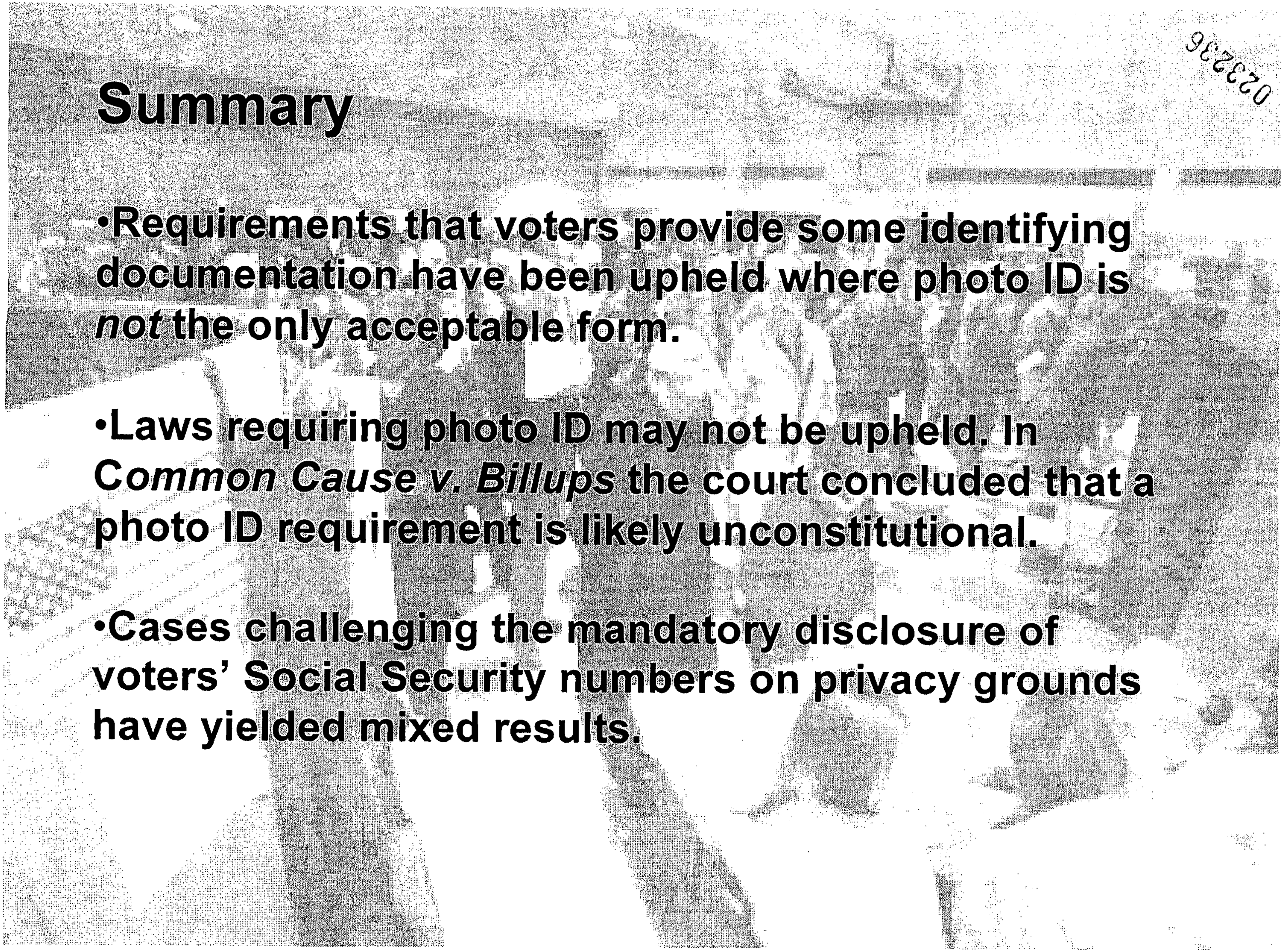
- African-American voters
- Voters with some college education

Voter Turnout By Minimum ID Requirement



Trends in Litigation

Dan Tokaji

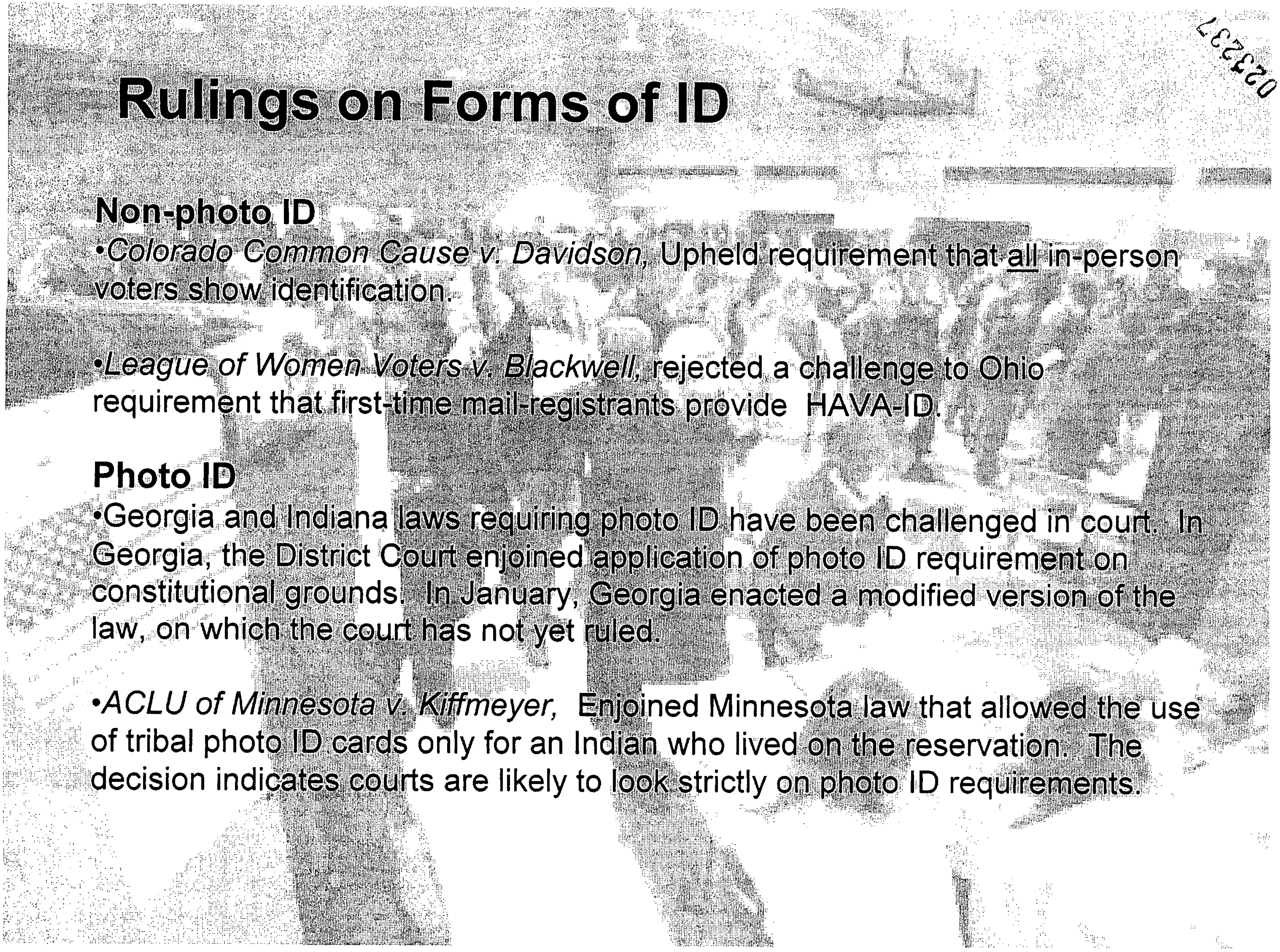


Summary

- Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form.

- Laws requiring photo ID may not be upheld. In C*ommon Cause v. Billups* the court concluded that a photo ID requirement is likely unconstitutional.

- Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.



Rulings on Forms of ID

Non-photo ID

- *Colorado Common Cause v. Davidson,* Upheld requirement that all in-person voters show identification.

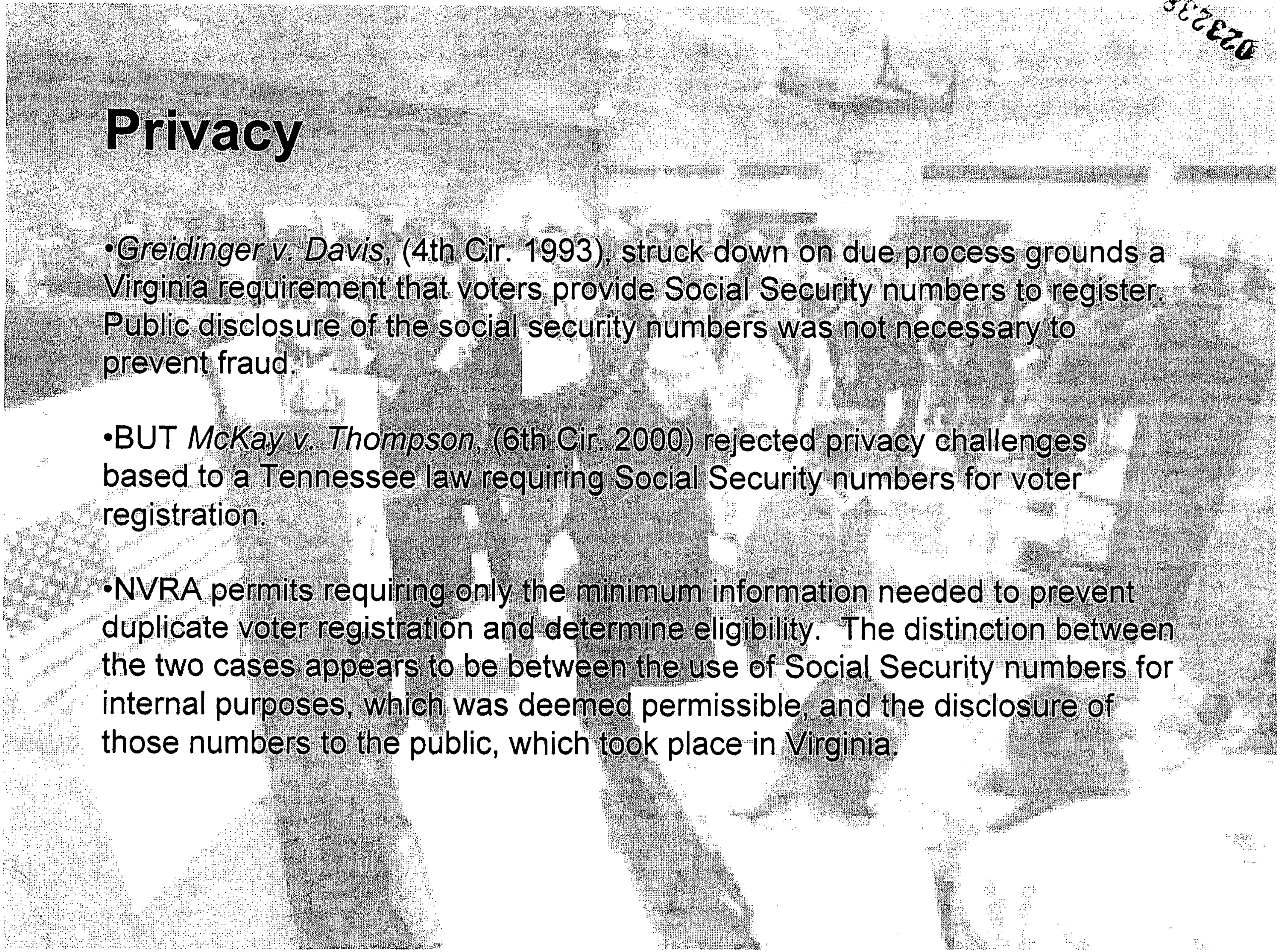
- *League of Women Voters v. Blackwell,* rejected a challenge to Ohio requirement that first-time mail-registrants provide HAVA-ID.

Photo ID

- Georgia and Indiana laws requiring photo ID have been challenged in court. In Georgia, the District Court enjoined application of photo ID requirement on constitutional grounds. In January, Georgia enacted a modified version of the law, on which the court has not yet ruled.

- *ACLU of Minnesota v. Kiffmeyer,* Enjoined Minnesota law that allowed the use of tribal photo ID cards only for an Indian who lived on the reservation. The decision indicates courts are likely to look strictly on photo ID requirements.

Privacy

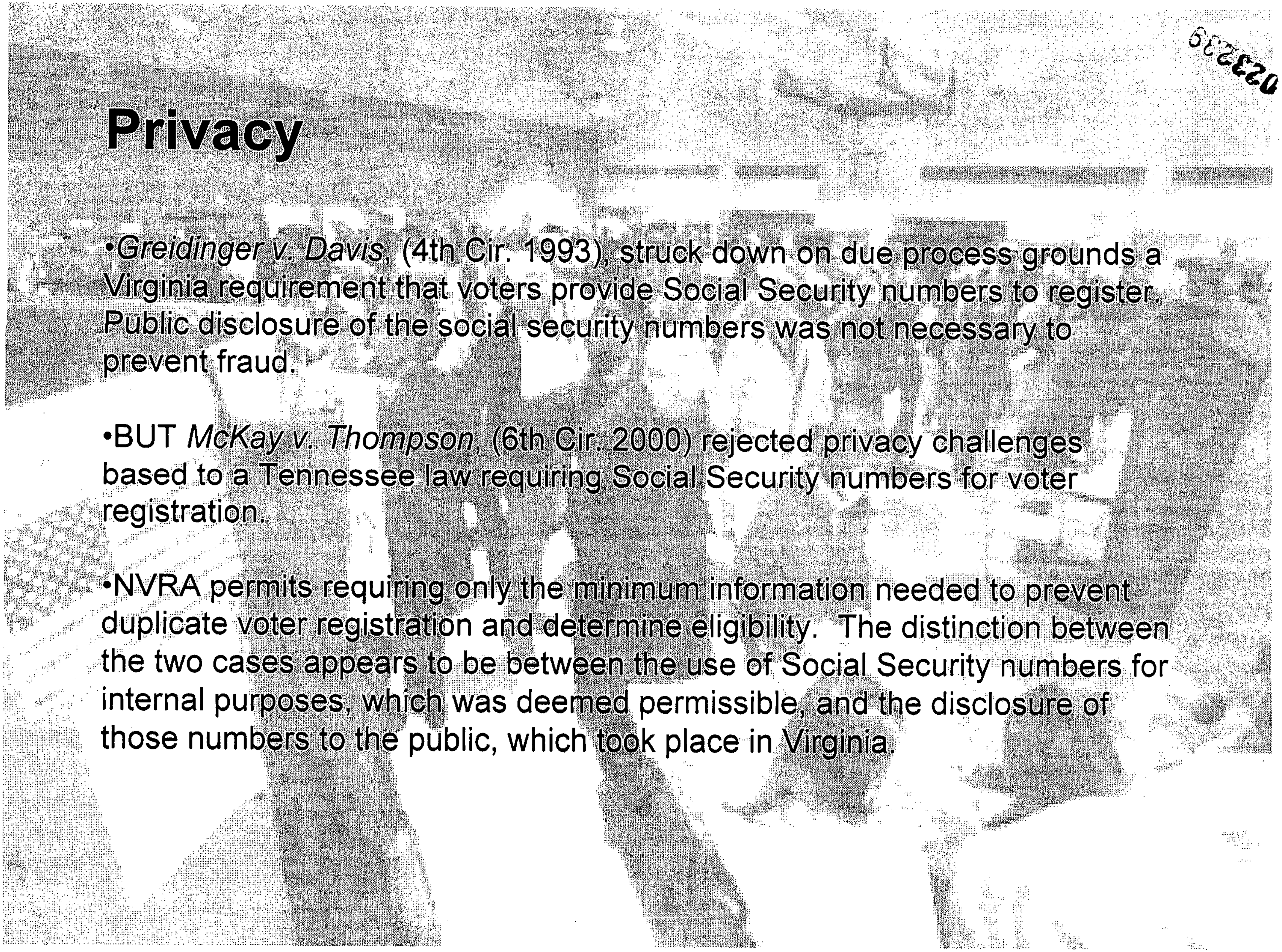


- *Greidinger v. Davis*, (4th Cir. 1993), struck down on due process grounds a Virginia requirement that voters provide Social Security numbers to register. Public disclosure of the social security numbers was not necessary to prevent fraud.

- BUT *McKay v. Thompson*, (6th Cir. 2000) rejected privacy challenges based to a Tennessee law requiring Social Security numbers for voter registration.

- NVRA permits requiring only the minimum information needed to prevent duplicate voter registration and determine eligibility. The distinction between the two cases appears to be between the use of Social Security numbers for internal purposes, which was deemed permissible, and the disclosure of those numbers to the public, which took place in Virginia.

Privacy



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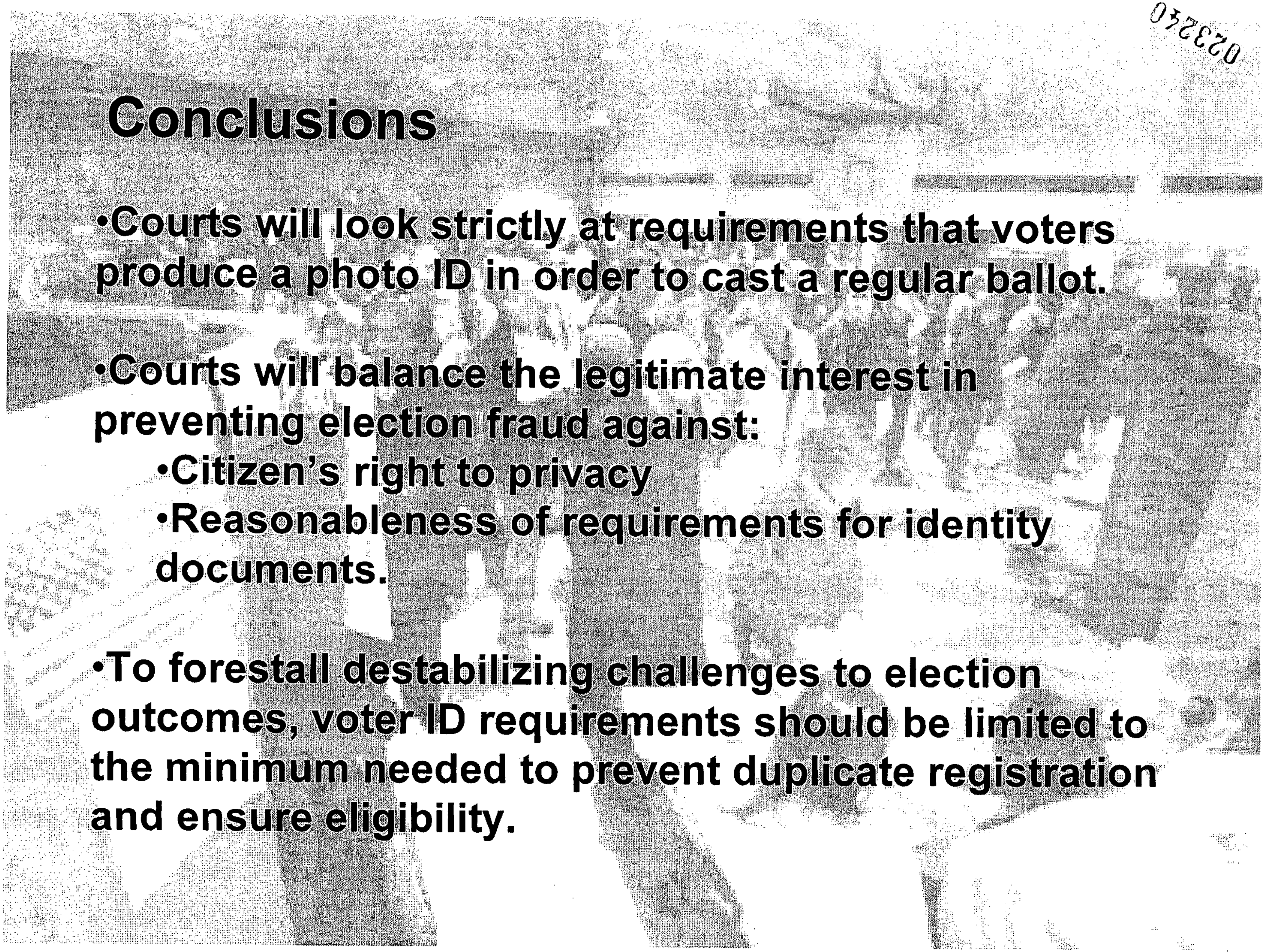
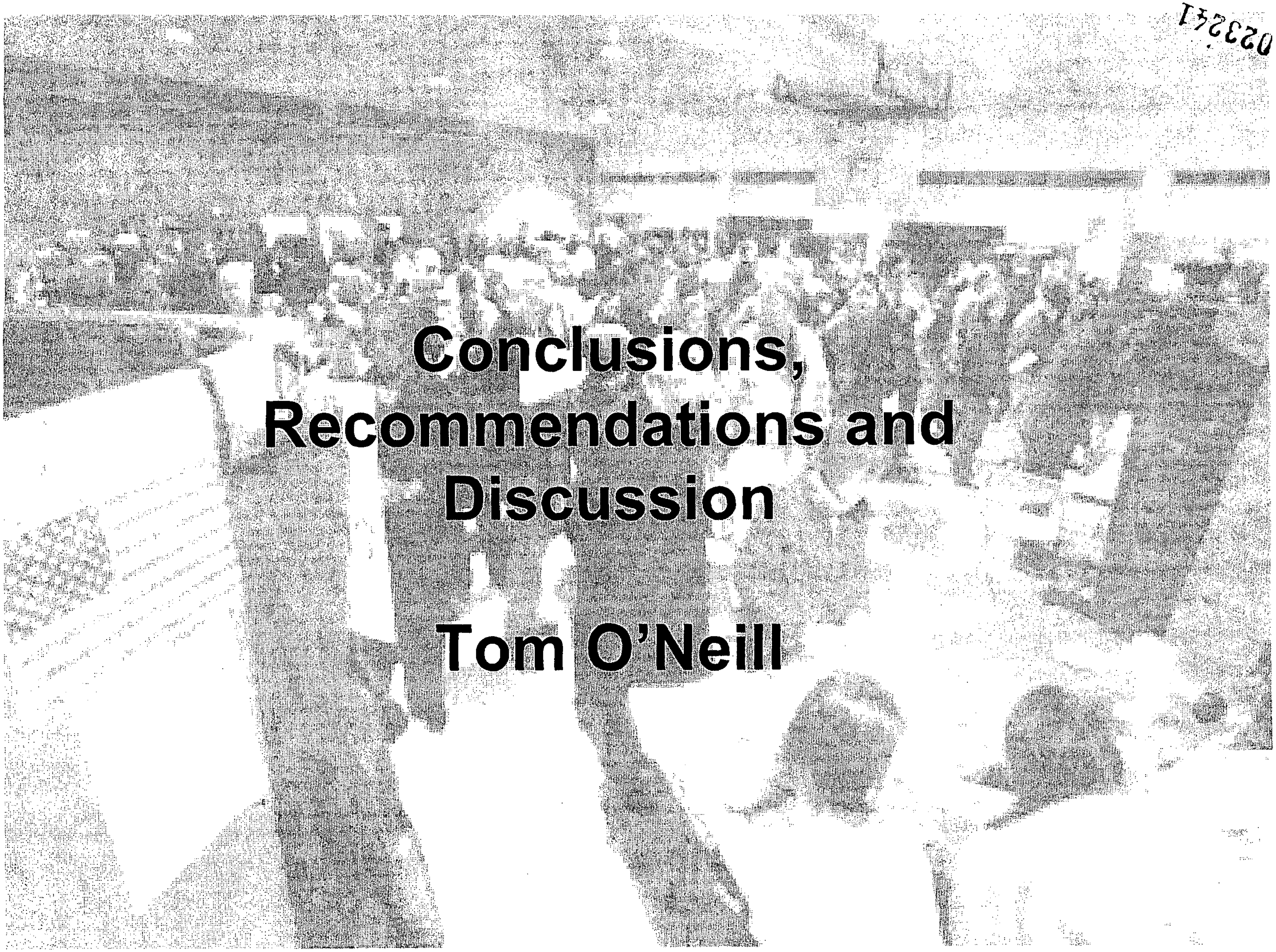


Conclusions

- Courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot.

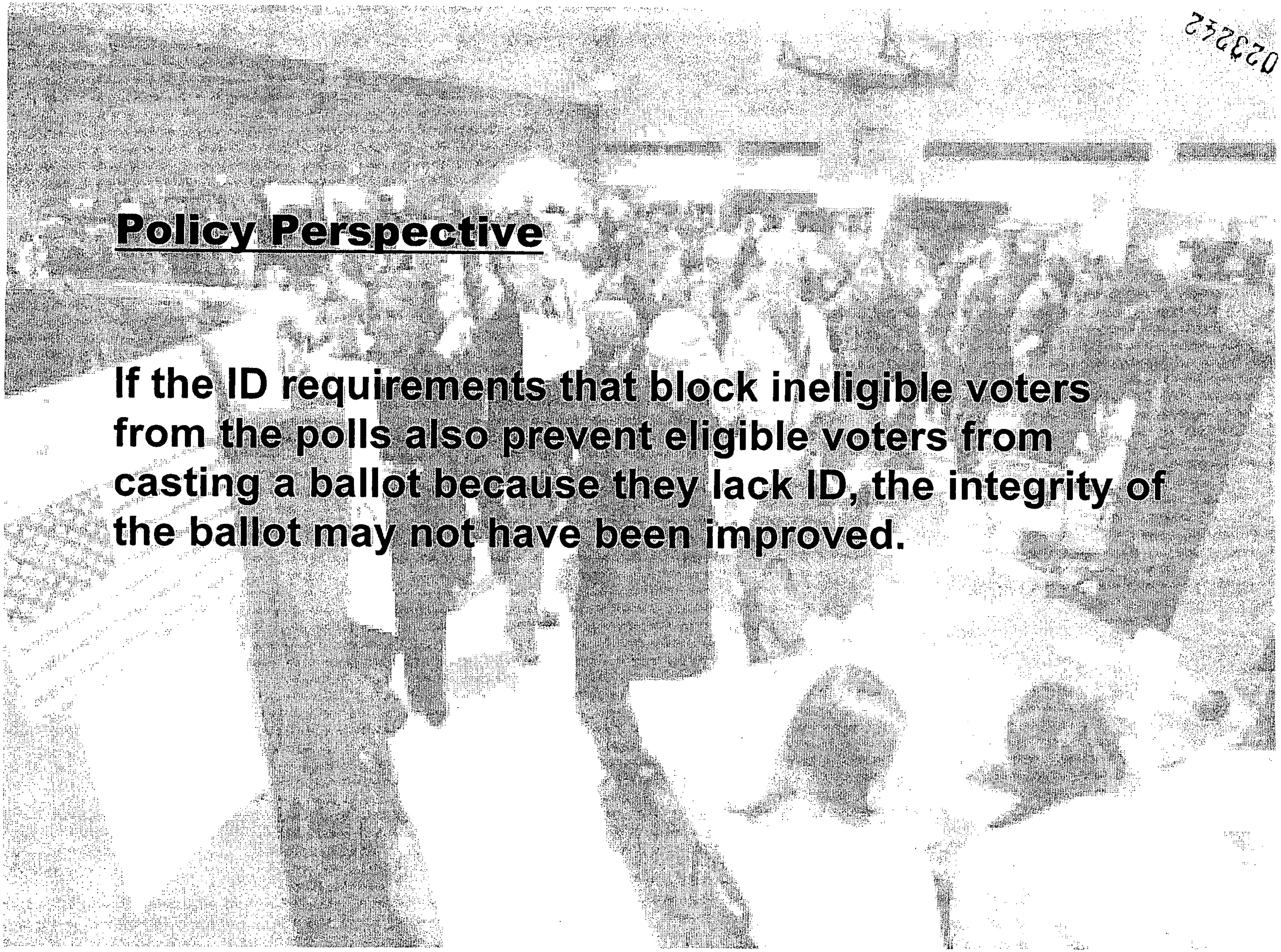
- Courts will balance the legitimate interest in preventing election fraud against:
  - Citizen's right to privacy
  - Reasonableness of requirements for identity documents.

- To forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.



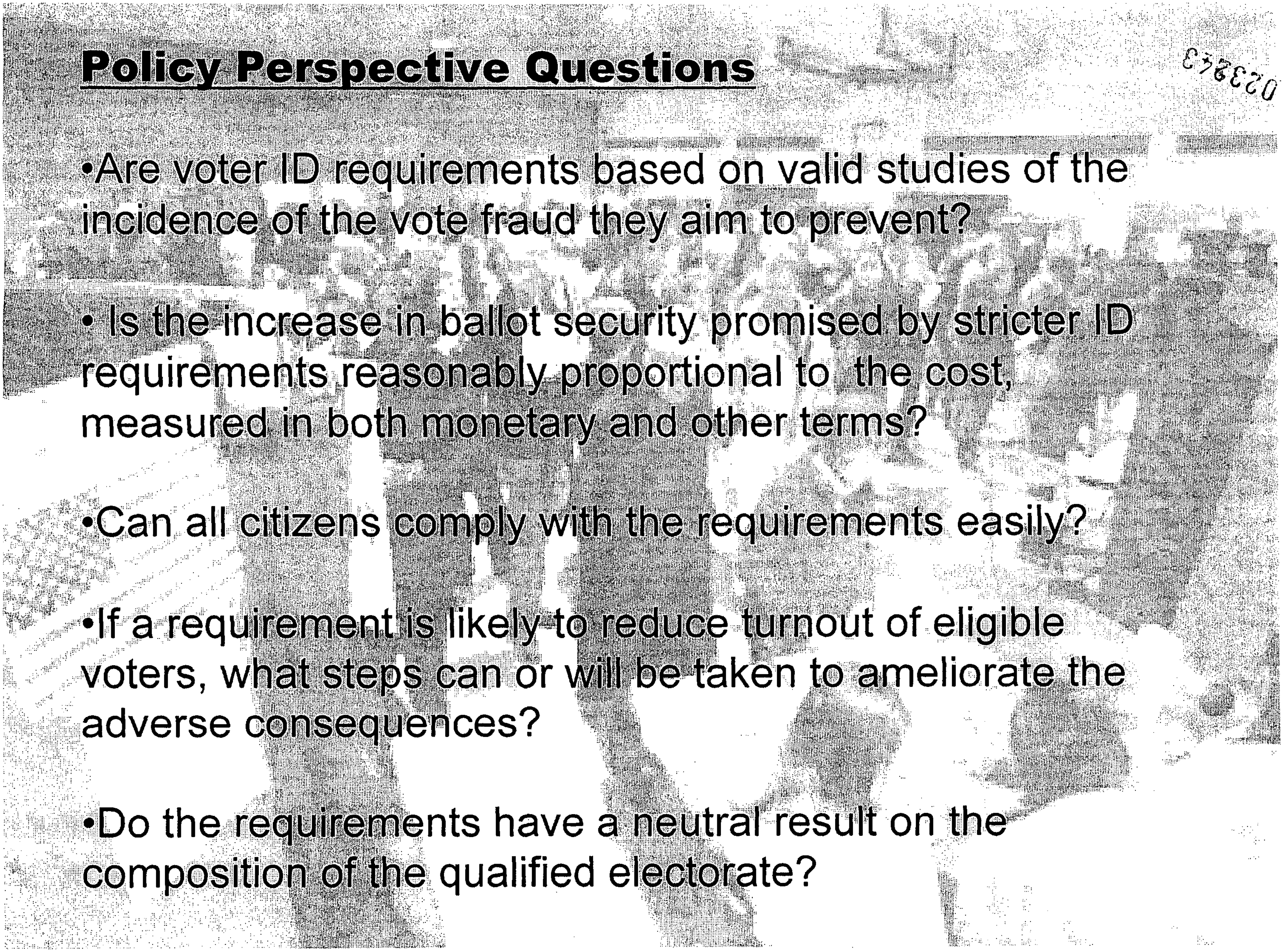
Conclusions, Recommendations and Discussion

Tom O'Neill



Policy Perspective

If the ID requirements that block ineligible voters from the polls also prevent eligible voters from casting a ballot because they lack ID, the integrity of the ballot may not have been improved.



Policy Perspective Questions

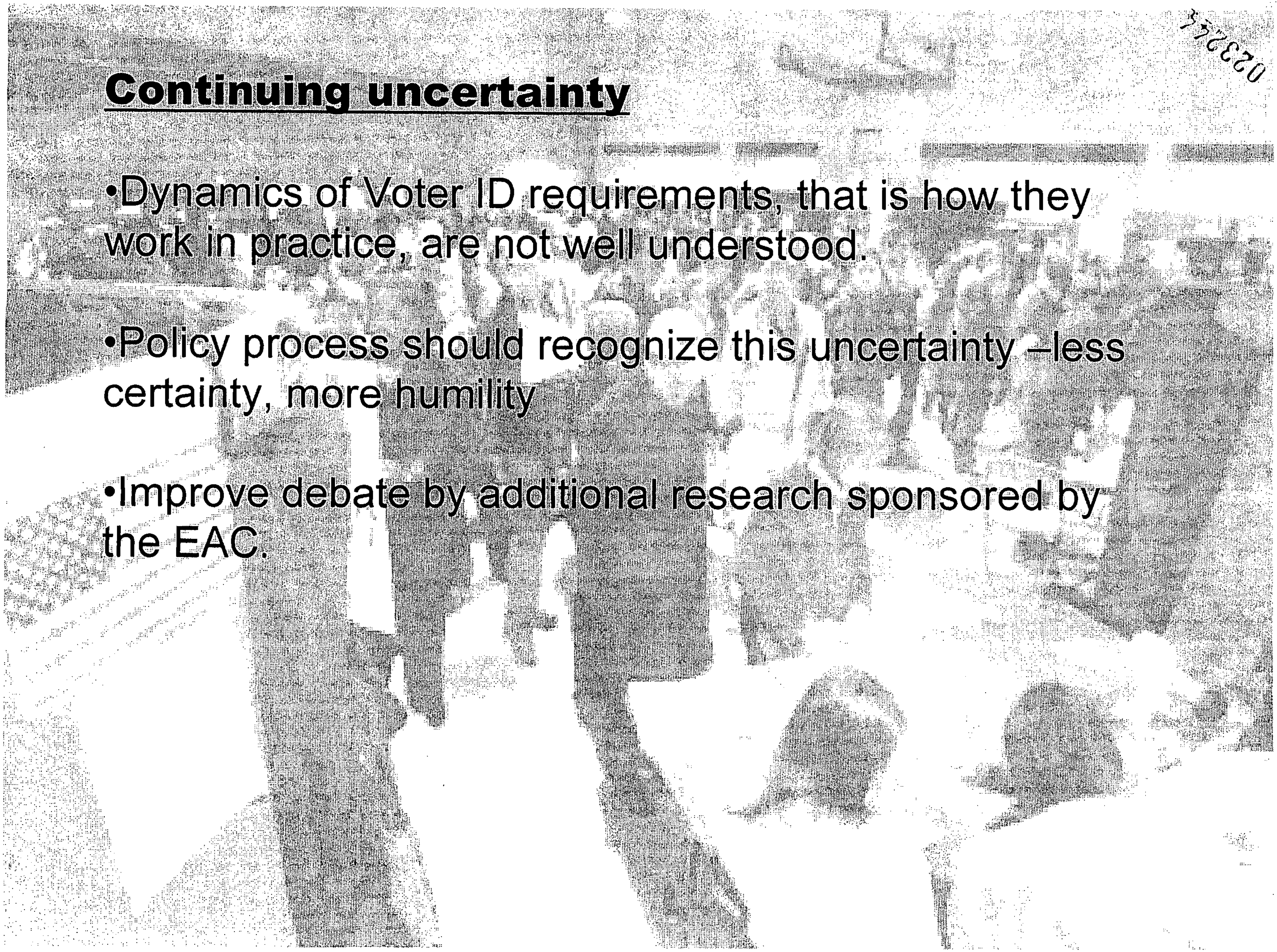
- Are voter ID requirements based on valid studies of the incidence of the vote fraud they aim to prevent?

- Is the increase in ballot security promised by stricter ID requirements reasonably proportional to the cost, measured in both monetary and other terms?

- Can all citizens comply with the requirements easily?

- If a requirement is likely to reduce turnout of eligible voters, what steps can or will be taken to ameliorate the adverse consequences?

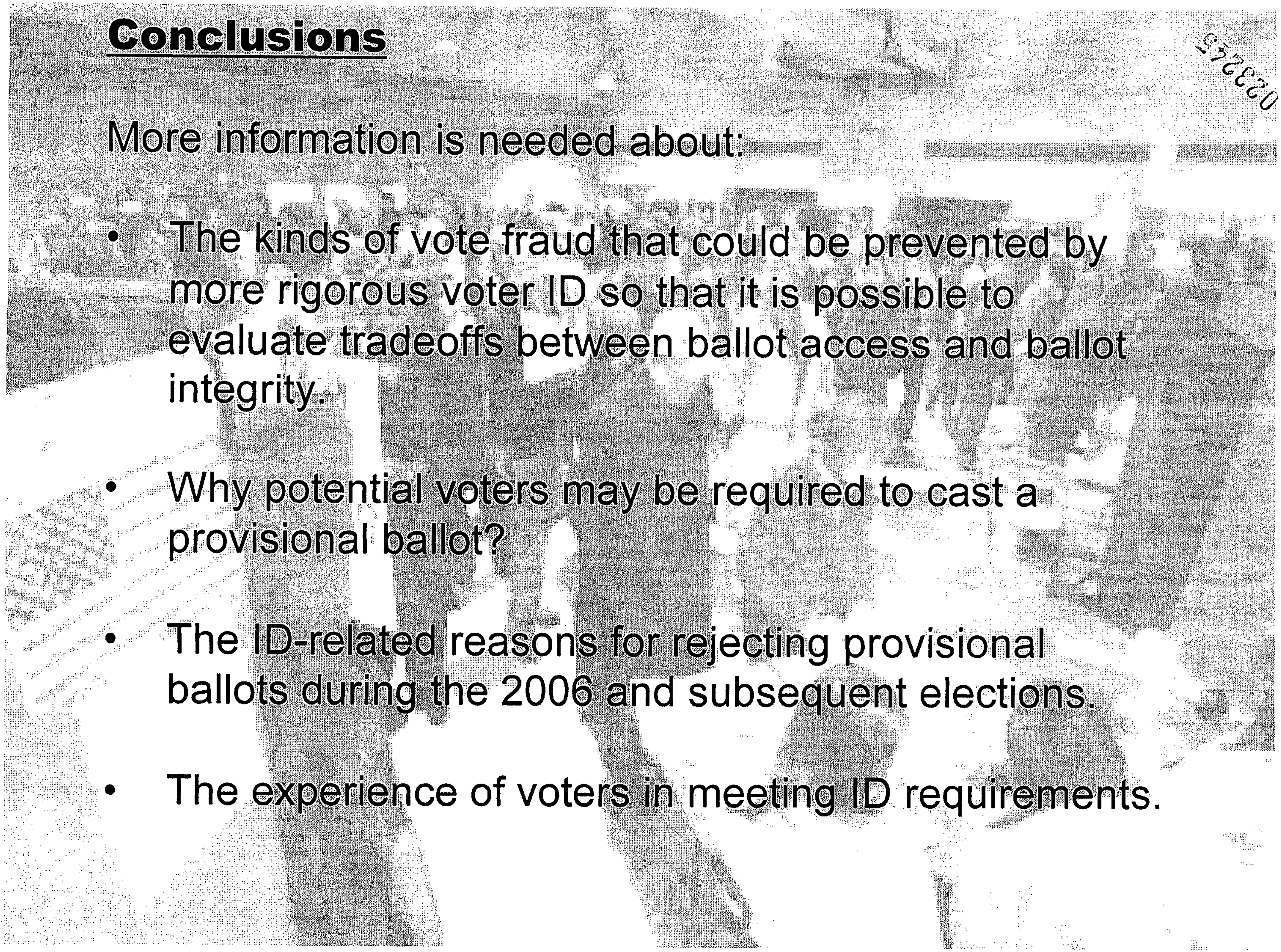
- Do the requirements have a neutral result on the composition of the qualified electorate?



Continuing uncertainty

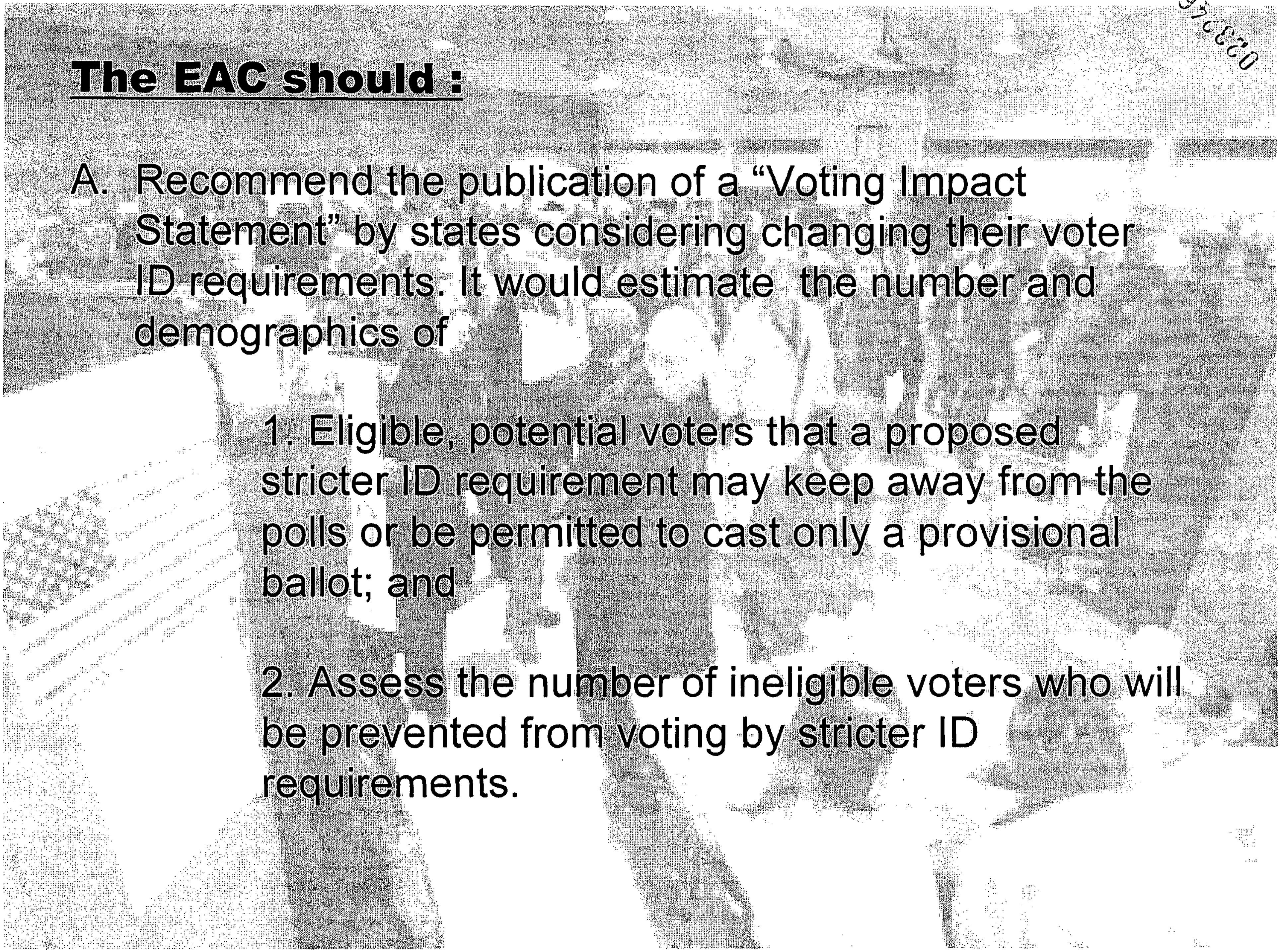
- Dynamics of Voter ID requirements, that is how they work in practice, are not well understood.
- Policy process should recognize this uncertainty –less certainty, more humility
- Improve debate by additional research sponsored by the EAC.

Conclusions



More information is needed about:

- The kinds of vote fraud that could be prevented by more rigorous voter ID so that it is possible to evaluate tradeoffs between ballot access and ballot integrity.
- Why potential voters may be required to cast a provisional ballot?
- The ID-related reasons for rejecting provisional ballots during the 2006 and subsequent elections.
- The experience of voters in meeting ID requirements.

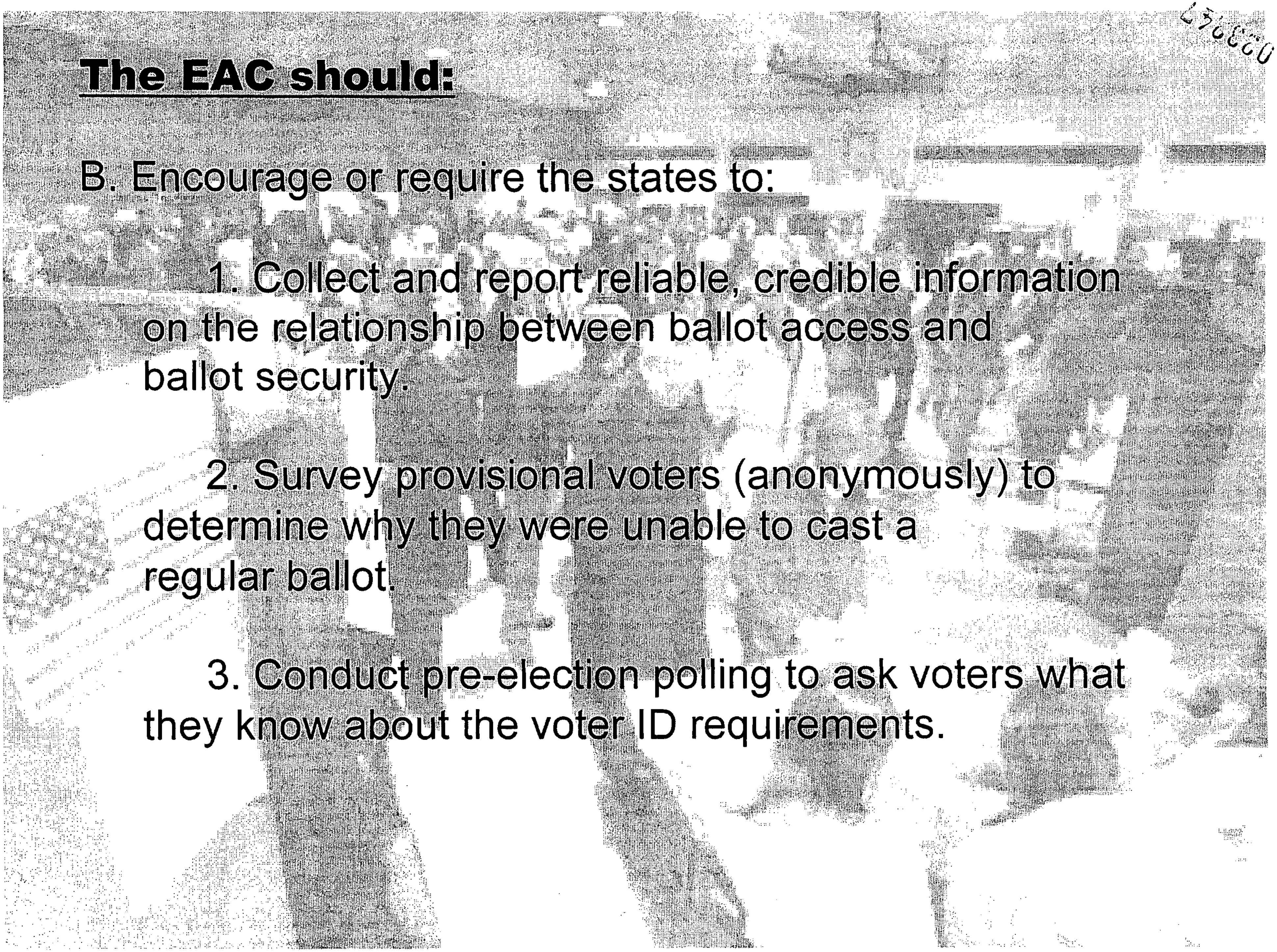


The EAC should :

A. Recommend the publication of a “Voting Impact Statement” by states considering changing their voter ID requirements. It would estimate the number and demographics of

1. Eligible, potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and

2. Assess the number of ineligible voters who will be prevented from voting by stricter ID requirements.



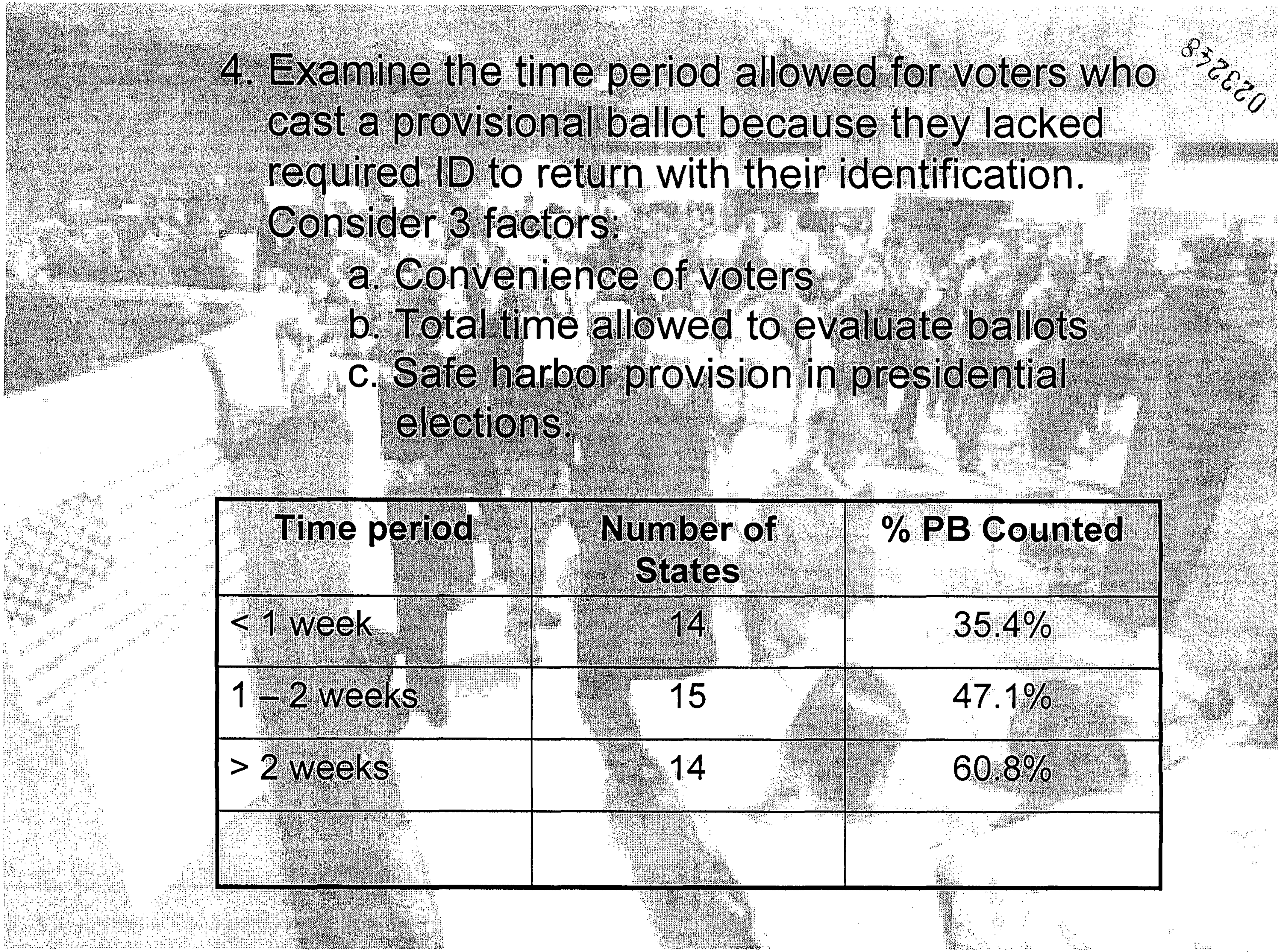
The EAC should:

B. Encourage or require the states to:

1. Collect and report reliable, credible information on the relationship between ballot access and ballot security.

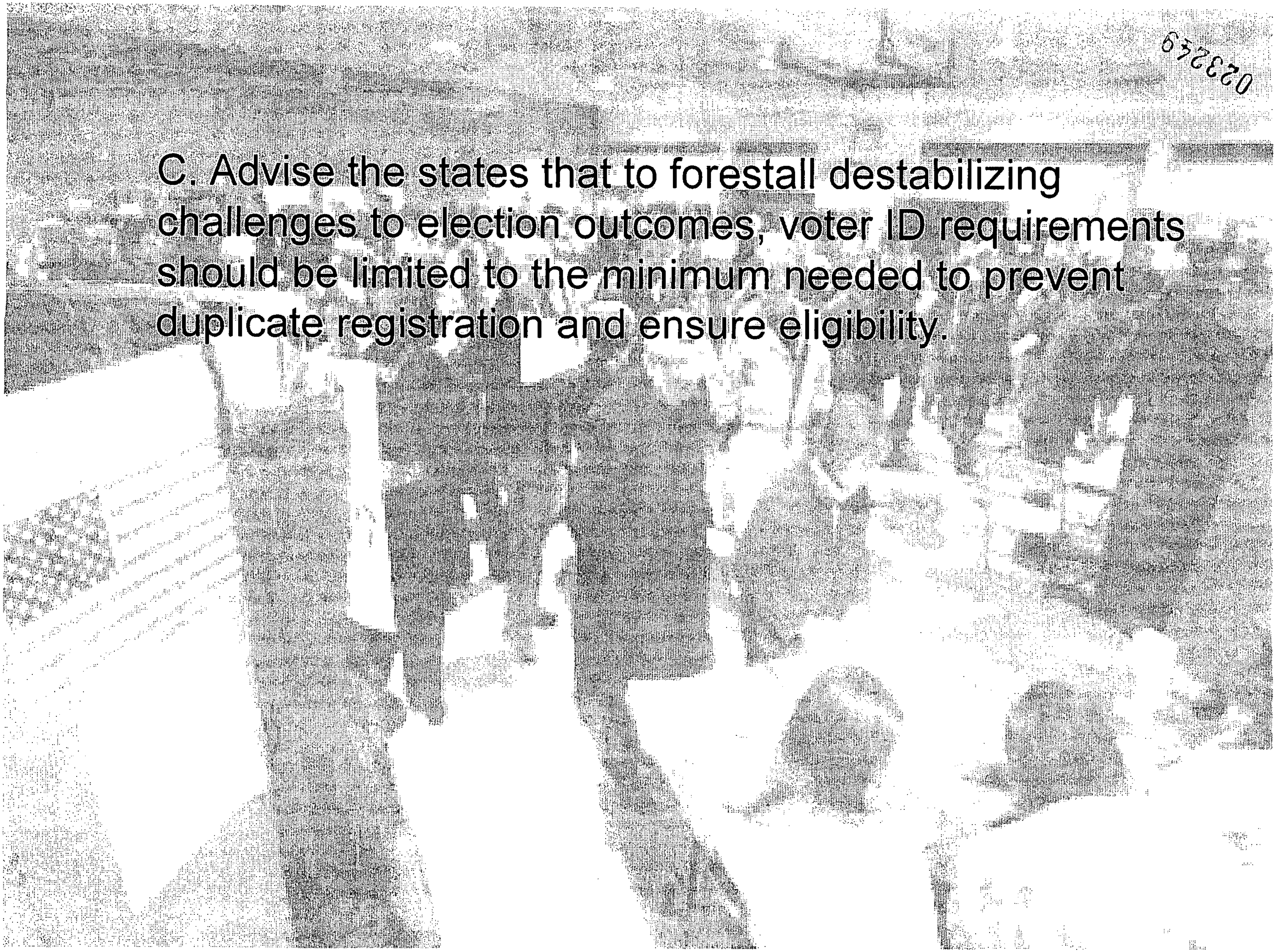
2. Survey provisional voters (anonymously) to determine why they were unable to cast a regular ballot.

3. Conduct pre-election polling to ask voters what they know about the voter ID requirements.



4. Examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. Consider 3 factors:
   - a. Convenience of voters
   - b. Total time allowed to evaluate ballots
   - c. Safe harbor provision in presidential elections.

Time period	Number of States	% PB Counted
< 1 week	14	35.4%
1 – 2 weeks	15	47.1%
> 2 weeks	14	60.8%



C. Advise the states that to forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.

Briefing for

U. S. Election Assistance Commission

April 3, 2006

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised Voter ID Paper

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:50 AM -----

"Tom O'neill"
[redacted]
03/31/2006 08:42 AM

To [redacted]
cc
Subject Revised Voter ID Paper

Karen,

Attached is a new draft of the Voter ID paper, revised to take into account the comments you gave us on Tuesday as well as some points raised recently by other reviewers. We'll be bringing hard copies of this draft with us to Monday's briefing. If you could distribute the new "Executive Summary" (pages 1 – 5) in advance to those who will take part in the meeting on Monday, I think the discussion would be improved.

Our train is scheduled to get into Union Station at 10:30 on Monday. Barring Amtrak delays, we should arrive at your offices shortly before 11.

Tom O'Neill

VoterIDReport0330.doc

023251

FINAL DRAFT REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

This report to the United States Election Assistance Commission (EAC) presents an analysis of voter identification requirements across the country and makes recommendations for best practices to improve implementation of voter ID requirements at the polls. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

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

Executive Summary

Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. The five categories are progressively more rigorous based on the demands they make on both voters[1] (and, to some extent) on election workers. The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample,

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[1] Even the most relaxed provisions for identification at the polls — anything stricter than the honor system used in North Dakota — will impose some burden on particular voters. *Harvard Law Review* 119:1146

which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents are not uniformly and conveniently available to all voters.

We collected data on turnout in all counties to permit an estimate of the relationship between the rigor of the ID requirements and the level of turnout. This aggregate analysis is useful, but does not provide valid estimates on the effects of different kinds of ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates.) To allow that analysis, we used the Census Bureau's Current Population Survey from November 2004, which asked a large sample of Americans about their experience in the election. It has the disadvantage of relying on self reports by respondents about their registration status, citizenship, and experience in the polling place, but it provides the demographic data needed to supplement the aggregate analysis.

To understand the legal issues raised by voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints to policies on voter ID requirements.

Findings

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.

Voter turnout at the state level in 2004 was lower in states where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Those figures, however, probably overstate the effect since the inclusion of other factors beyond voter ID requirements in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of the other factors, the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents orf people living below the poverty line.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[2] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the

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[2] Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous Voter ID requirements affect the decision by potential voters to go or stay away from the polls– are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice the publication of a "Voting Impact Statement" by states considering changing their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should analyze this publish an analysis of this information to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. The states should also be encouraged to use this information to increase the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
    - Useful information could be supplied by exit polling or surveys of voters by local election officials. It would make clear why those who cast a provisional ballot

were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.

  - Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.

- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[3], and the safe harbor provision in presidential elections.
- Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

Background and Approach of the Study

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The stress on voters to provide required ID documents may be greater at the polls on Election Day than when registering. The pressures arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may be faced with long lines and limited time.

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[3] Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [4] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures on voter ID goes ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. The controversy in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[5]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[6] Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and , if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

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[4] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

[5] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[6] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[7] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.[8] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the

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[7] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[8] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes can be more effective if based on clear standards --legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[9]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[10]
3. How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[11]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[12] A thorough, objective

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[9] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[10] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[11] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[12] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at

impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[13]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another. Whatever the requirement may be, can all citizens comply with it easily and at no or minimal cost?

Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

This neat assignment in the following table and map of each state to one category no doubt fails to reflect actual practice at many polling places. Like any system run by fallible people, the voter ID process is subject to wide variation in practice. Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Some voters may be waved through the process without a look at any document, no matter what the regulations say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters actually encounter.

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administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[13] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen Hasen's has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

TABLE 1 -- Voter ID Requirements

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID^	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID******	Provide ID	Bring ID Later

Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

**State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

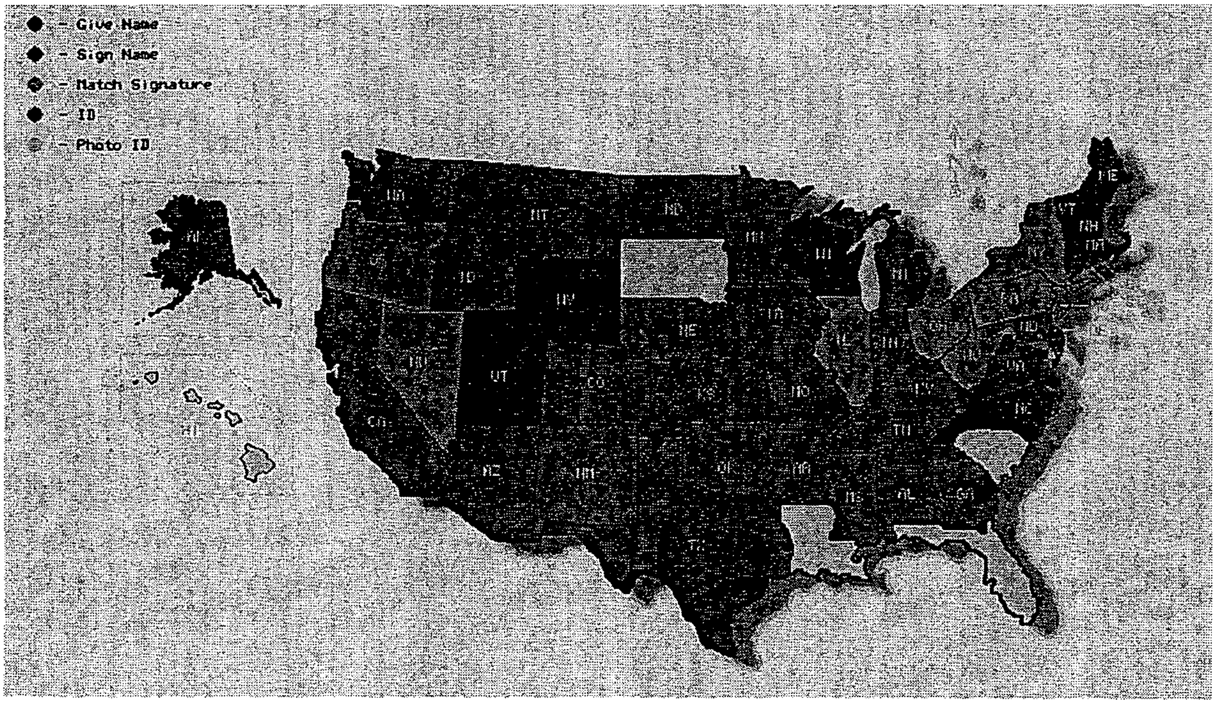
***Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

****Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

*****Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

******Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Figure 1



Voter ID Requirements 2004

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Since it is not practical to attempt to capture the wide variety of how voter ID requirements are actually implemented across the nation's tens of thousands of polling places, the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

Effect of Voter ID requirements on Turnout

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [14]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

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[14] See Appendix ___ for the full report on voter ID and turnout.

Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit is regarded as the most rigorous.

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**63.1 %**	State Name	**61.3 %**
Sign Name	**58.6 %**	Sign Name	**60.4 %**
Match Signature	**62.1 %**	Match Signature	**59.2 %**
Provide Non-Photo ID	**57.8 %**	Provide Non-Photo ID	**57.6 %**
Provide Photo ID	**57.3 %**	Swear Affidavit	**58.7 %**
Average Turnout (All States)	**59.6 %**		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors can place the effects of voter identification in a more accurate context. The multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line. In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. The decline in turnout is particularly noticeable in counties with concentrations of Hispanic residents or individuals who live below the poverty line. Determining if the reduction in turnout is, in fact, among the Hispanic or poor residents of those counties requires further research at the individual level.

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and Conclusions of the Analysis

The results give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the self-reports of elderly voters, while indicating that they would be slightly less likely to vote as ID requirements become stricter, do not show a dramatic effect.

The data examined in this analysis could not capture the dynamics of how identification requirements lower turnout. Do know the voter ID and stay away from the polls because they cannot or do not want to meet them? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups,*

Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [15]

The dynamics of Voter ID requirements –how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in

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[15] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed. [16]

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[16] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

a. Summary of case law on Voter ID issues (included with this draft)
b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
d. Compendium of states' legislation, procedures, and litigation

APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14th Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

    - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
    - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
    - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
    - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
    - Substantive due process: ruled that internal use of SS# not a burden
    - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
    - P&I, Article IV: does not protect in-state citizens
    - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
    - VRA: ruled that race was not made a "qualification" for voting
    - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
    - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
    - VRA: ruled that it was not a "test or device" because it applied equally
    - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

American Civil Liberties Union of Minnesota v. Kiffmeyer, **No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[17]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[17] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[18]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[19] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[18] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[19] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[20] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[20] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
    - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
    - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
    - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
    - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
    - Discusses changes in AL to their election law in 2003, including adding voter ID
    - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
    - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
    - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
    - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
    - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
    - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
    - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
    - Lot of analysis on HAVA and voter ID
    - Little bit of historical
    - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences.* 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice.* 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics.* 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review.* 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly.* 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------ "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice.* 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review.* 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy.* 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections.* Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective*. Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies*. 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science*. 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior*. 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography*. 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies*. 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout*. Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research*. 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects*. Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------ "Easy Registration and Voter Turnout." *Journal of Politics*. 59:2 (May 1997).

------ "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000).

------ "Voter Registration and Turnout in the United States." *Perspectives on Politics*. 2:3 (September 2004).

------ "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly*. Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research*. 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998).

------ "The Political Implications of Higher Turnout." *British Journal of Political Science*. 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly*. 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies*. 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality*. Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal*. 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research*. 29:2 (March 2001).

------ "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior*. 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting*. Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------ *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation*. Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980*. New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*. 57:3 (August 1995).

------ "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice*. 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics*. 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review*. 84:2 (June 1990).

------ "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------ "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------ "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------ *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------ *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------ "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------ "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review*. 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:47 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Voter ID Paper --Final Draft

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:45 AM -----

"Tom O'neill"
[redacted]
03/15/2006 08:21 PM

To [redacted]
cc "Tim Vercellotti" [redacted], [redacted] Dobrich" <[redacted]
Subject Voter ID Paper --Final Draft

Karen,

Attached is the final draft of the Voter ID paper, with recommendations for the EAC to consider promulgating as best practices. Two appendices are included as part of the draft and a third, the statistical analysis of the effects of different voter ID requirements on turnout, is attached separately to this email.

We look forward to discussing this final draft with you and with the commissioners on April 3. I'll be preparing a Powerpoint presentation for that meeting. Any guidance you can give me later this month on particular questions that briefing should address would be appreciated.

The Moritz-Eagleton team will be meeting next Tuesday at 9:30 a.m.. If you have preliminary comments you would like us to consider, that meeting would be a most convenient occasion to discuss them.

Tom O'Neill

ReportFinalDraft.doc

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

1. Introduction and Report Background

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve implementation of the requirements for voters to show identification pursuant to [statute or regulation citation] It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

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

2. Voter Identification –Background and Approach of the Study

Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The burden of providing required ID documents on the voter may be greater at the polls on Election Day than at the time of registration. The burden of checking ID, even as simple as a signature match, can be much greater on election workers at the polls than on those registering voters. Poll workers may be faced with long lines and limited time. This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [1] The emphasis here is on Voter ID on Election Day and afterwards as election judges evaluate provisional

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[1] As the Carter-Baker Commission noted, photographic ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify identification. Commission on Federal Election Reform, pp 46-47.

ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

This analysis takes a view of voter ID issues broader than the rather narrow identification requirements in HAVA. Much of the national ferment over voter ID goes beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those casting a ballot for the first time who had not registered in person. The controversy in the states over voter ID stems from the HAVA requirements, goes beyond those requirements, and sets the context for the analysis here.[2]

Identification is often described as the critical step in protecting the integrity of the ballot, the process that ensures that the potential voter is eligible and permitted to cast a ballot and one ballot only. In fact, ensuring ballot integrity requires a perspective that takes in the entire voting process. Protecting the integrity of the ballot requires more than preventing the ineligible from voting. It also should ensure that all those who are eligible and want to vote can cast a ballot that counts, and that they can effectively cast a ballot for the candidate of their choice. The protection effort must take into account all forms of voting, including absentee ballots, and embrace each step in the process. A voting system that establishes onerous requirements for voters to identify themselves may prevent the ineligible from voting, but it may also prevent the eligible from casting a ballot. If the ID requirements of a ballot protection system block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or forget to bring to the polls the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This analysis does not include consideration of the incidence of vote fraud, the forms that it takes, nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. The EAC has commissioned a separate study of vote fraud and instructed us not to address that issue in this research.

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[2] Harvard Law Review 119:1127. "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA. . . . HAVA makes explicit that it shall not 'be construed to prevent a State from establishing election technology and administration requirements that are more strict than' HAVA itself provides. The states have accepted the invitation. "

Nonetheless, a broad view of ballot integrity is needed to appreciate the background and context of this narrower study. We explore the inter-relationships between Voter ID requirements and Provisional Voting and estimate the effects of various voter id requirements on turnout and on the casting of provisional ballots.

Voters lacking required ID, or who have ID that does not reflect their current address, may be able to vote only by casting a provisional ballot.[3] To the extent that stricter voter ID requirements divert more voters to the provisional ballot, voter ID requirements can put stress on the already pressured management of the polling place. Administering provisional ballots is more expensive than the normal ballot. Scrutiny of ID can create lines at the polling places, lines made longer as voters are diverted to the provisional voting line. Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle that will keep more citizens from the polls. A review of voter identification practices should keep in mind that America's problem may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes will be more effective if based on clear standards –legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

- Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?
- How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[4]
- How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity

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[3] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[4] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[5]

- How cost-effective is the system? Does it increase the security of the ballot at an affordable cost, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.
- If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[6]
- Does it comply with the letter and spirit of Voting Rights Act?
- The seventh question is more difficult to measure than those described in the 6 questions outlined above. The Voter ID requirements should have a neutral result on the composition of the qualified electorate. That is, those requirements should not be designed to reduce the turnout of particular groups of voters who may have a propensity to support one party over another. Whatever the requirement may be, all citizens should be able to comply with it easily and at no or minimal cost.

Summary of findings and conclusions

Voter turnout at the state level in 2004 declined where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Including other factors beyond voter id requirements diminishes the influence of voter ID on turnout. But the analysis still offers some support for the hypothesis that as the burden of voter identification

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[5] In New York, in 2004, disparities in training and voting information were made all too apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[6] For example, the Carter-Baker Commission accompanied its recommendation for a national voter ID card with a recommendations for an affirmative effort by the states to reach out and register the unregistered, to use the new Voter ID regime as a means to enroll more voters.

requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[7] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice that before states adopt a change described as increasing ballot security, states should publish an analysis of the number of eligible, potential voters that the new requirement may keep away from the polls or be permitted to cast only a provisional ballot as well as an estimate of the number of ineligible voters who will be prevented from voting.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. The data should be analyzed to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent and should describe the dynamics of voter ID in preserving the security of the ballot?

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[7] Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

  - Useful information could be supplied by exit polling. It would identify those who had cast a provisional ballot and ask why they were unable to cast a regular ballot. Answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
  - Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter id requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three criteria: the convenience of the voter, the total time allowed to evaluate ballots[8], and the safe harbor provision in presidential elections.

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[8] Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

3. Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements.* Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility.

TABLE 1 -- Voter ID Requirements

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later

New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Match Sig.	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID******	Provide ID	Bring ID Later
Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

**State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

***Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

****Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

*****Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

******Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

In 9 states, voters were required merely to state their names so that poll workers could locate them in the registration book. In 14 states, voters signed their names. In 8 states, voters' signatures were matched with a specimen signature. In 15 states voters had to show some form of ID, not necessarily an official picture ID. And in 5 states, voters were required to show an official photo ID, although in 2004 voters who lacked a picture ID could execute an affidavit and vote a regular ballot.

This neat assignment of each state to one of a few categories may fail to reflect actual practice at a polling place. Like any system run by fallible people it is subject to wide variation in practice. Voters may be confronted with demands for identification at variance with state statutes or legislation. Other voters may be waved through the process without a look at any document, no matter what the regulations may say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters may encounter.

It is not practical to attempt to capture the wide variety of how voter ID requirements may be actually implemented across the nation's tens of thousands of polling places. Recognizing that means that the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

Effect of Voter ID requirements on Turnout

Summary of Findings and Conclusions

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [9]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each

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[9] See Appendix ___ for the full report on voter ID and turnout.

level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. a form of identification, and providing a form of photo identification.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**63.1 %**	State Name	**61.3 %**
Sign Name	**58.6 %**	Sign Name	**60.4 %**
Match Signature	**62.1 %**	Match Signature	**59.2 %**
Provide Non-Photo ID	**57.8 %**	Provide Non-Photo ID	**57.6 %**
Provide Photo ID	**57.3 %**	Swear Affidavit	**58.7 %**
Average Turnout (All States)	**59.6 %**		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors an place the effects of voter identification in a more accurate context. To consider that broader context, our multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground for president, governor or senate voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-

Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line.

In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line.

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. (Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting.) Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age in years, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note

that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and Conclusions of the Analysis

The results presented here give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this analysis could not capture the dynamics of how identification requirements might lower turnout. Do these requirements dampen turnout because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most

effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

4. Litigation over Voter ID Requirements

There have been a handful of cases challenging identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether or not laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on cases challenging requirements that voters present some form of identifying documents if the photo identification is the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups,*

Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

suggest that best practice may be to conform to the NVRA's limitation on requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

5. Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

This information would allow a more informed judgment to be brought to bear in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [10] The dynamics of Voter ID requirements – how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That research might address that, so far as may be

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[10] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." The exclusion of voters through restrictive ID requirements could affect election outcomes as much as fraud by voters at the polls. *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

necessary to reduce vote fraud, could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended by our colleague Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed. [11]

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[11] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. These electronic photos should satisfy the anti-fraud concerns of conservatives as much as printed photos that citizens would be required to bring to the polls. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

a. Summary of case law on Voter ID issues (included with this draft)
b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
d. Compendium of states' legislation, procedures, and litigation

APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
    - 14th Amendment EPC: no classification (applied strict scrutiny)
    - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
        - Compelling interests: preventing voter fraud (deemed compelling)
        - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
        - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
    - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
    - Substantive due process and equal protection
        - No improper discrimination

        - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
        - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
    - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
    - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
    - Substantive due process: ruled that internal use of SS# not a burden
    - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
    - P&I, Article IV: does not protect in-state citizens
    - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
    - VRA: ruled that race was not made a "qualification" for voting
    - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
    - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
    - VRA: ruled that it was not a "test or device" because it applied equally
    - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

***American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[12]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[12] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[13]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[14] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[13] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[14] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[15] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[15] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?,* 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes,* 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process,* 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet,* 27 WM. MITCHELL L. REV. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?,* 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?,* 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon,* 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud,* 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution,* 52 U. PITT. L. REV. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy.* Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science.* 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice*. 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics*. 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review*. 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly*. 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001).

------- "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice*. 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis*. Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review*. 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy*. 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics*. 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections*. Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective.* Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union.* Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science.* 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------ "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------ "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------ "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------ "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------ "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------ "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------ *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------ "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------ "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------ "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------ "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------ *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

023327

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------ *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------- "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------- "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review*. 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

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Appendix

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:46 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Final Best Practices document final and attachment Two

Karen Lynn-Dyson
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:44 AM -----

Nicole Mortellito/CONTRACTOR/EAC/GOV
02/23/2006 04:12 PM

To [redacted]
cc
Subject Final Best Practices document final and attachment Two

Final markups

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Regards,

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DRAFT

Deliberative Process Privilege

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

November 23, 2005

Submitted by

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

The Moritz College of Law, The Ohio State University

FINAL DRAFT
11/23/2005

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U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

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Please provide an Executive Summary to provide background and summarize the key recommendations.

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

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.[2] The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that where the ballot must be cast in order to be counted.[3]

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, first-time voters who cannot provide identification, as required under HAVA, and voters who were

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challenged at the poll.[4] HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. HAVA also requires election administrators to notify individuals of their opportunity to cast a provisional ballot.

Provisional Ballots in the 2004 Election

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.[5] (This number does not match the EAC 2004 Election Day Survey. 64.5% counted)

These totals obscure the tremendous variation in provisional voting among the states. HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Six states accounted for two-thirds of all the provisional ballots cast.[6] State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000, from a high of 7% in Alaska's to Vermont's .006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted ballots at more than twice that rate: 44%. (Or, as the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without."[7])

The wide variations in the use of provisional ballots argue for the promulgation of best practices that states can use to determine how to make procedures clearer to both officials and voters could improve the implementation of provisional voting across the country. (Is this a best practices recommendation?)

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

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

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- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots. (The average of provisional ballots cast was 64.5% counted. A third category had to account for a significant amount over 64.5%. What was that category?)

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- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.[9] That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

- Be prepared to direct voters to their correct precincts with maps;
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Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

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

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- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots. (The average of provisional ballots cast was 64.5% counted. A third category had to account for a significant amount over 64.5%. What was that category?)
- Perhaps another reason provisional ballots must be cast in the correct precinct in order to be counted is that local races are also important and that allowing provisional ballots to be counted by voters who cast them outside of the precinct and only counting the ballots for the upper ballot races for outside of the precinct can disenfranchise voters from participating in local races. This argument has been used by many legislatures and in court castes to require that provisional ballots must be cast in the correct precinct in order to be counted.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.[9] That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

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If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC should consider providing all states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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curve. Two other possibilities exist. Current understanding of the provisional voting processes in use in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots – as measured by intrastate consistency in administration--- will be harder and take longer to achieve.[10] This ballot should mention something about election judges and their training.

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2. "Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail safe way for voters with registration problems a way to cast a ballot. (wording too strong) The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

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Other influences decreasing consistency among the states include:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted. Some states merely require a voter's signature, some match signatures, some require identity documents, others require an affidavit, and a few require photo identification.[11]
    - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
    - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
    - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
    - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half

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

[11] See Table 2 in Appendix 2 for information on the verification method used in each state.

(52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office. (the voter was registered, than the ballot counted, the voter did not have to present identification).

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- Voter registration databases provided information that reduced the number of provisional ballots counted.[12] In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

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- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.[13]
    - In experienced states, the disparity was even more pronounced; 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
    - If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.[14]

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots. Perhaps it is the judges training or it is, in part, because of different laws.[15]

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

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

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

[15] For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly

Reacting to the lack of consistency within states, (not the Carter-Baker Commission) recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."[16]

Election Line reported that:

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

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

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

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

- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, high mobility, (no previous mention of this factor. What research exists to back up naming high mobility as a factor?) and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts were the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader

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non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

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

measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology (what is meant by this statement) and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available. (Are polling places posting their provisional voting signs? Are election judges doing their jobs?)

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

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

Estimates of Votes Lost In 2000 Presidential Election

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

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

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then,

might be 40% to 50% (ballots counted/votes lost)[*]. (this is unclear. What is trying to be said? Is a comparison of the # of provisional ballots actually counted to the MIT estimate of lost ballots in 2000 being made? If so, would the MIT survey be influenced by the implementation of statewide voter registration databases or other interim measures that would improve the quality of voter registration lists?) Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states[17] came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.[18]

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

The issue of counting provisional ballots cast in the wrong precinct was addressed by Colorado, Arkansas, and North Dakota. How was it addressed?

Litigation

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

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

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

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

This litigation was significant nonetheless.

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

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

Need for Promulgation of Best Practices

Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. This is false. If they are registered (the voter registration database is checked as required by HAVA or restricted by state requirement) the provisional counts. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

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

Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity

among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

Self-evaluation of Provisional Voting –4 Key Questions (Best practice suggestion?)
The first recommendation is not for a specific procedure, but rather for a way of thinking about provisional voting. As legislators and election officials in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?

2. Is the system sufficiently robust (what system – the voting system or the procedures for provisional voting?) to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and with litigation looming?

3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

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

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

Best Practices For Each Step In The Process
We examined each step of the provisional voting process to identify specific areas where the states should focus their attention, and we offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process. (State how were these particular best practices chosen or arrived at?)

The Importance of Clarity

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

the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."[19]

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.[20] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.

- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[21] (does this mean that the state should provide poll workers training? Most provided by local election jurisdictions. Is the recommendation to deviate from current practice?)

- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [22] Recent legislation in Arizona indicates that HAVA's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot. [23]

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States

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

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

[21] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

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

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

can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency." [24]

2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[25]

3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information. Why not recommend local websites to do the same as state sites?

B. At the Polling Place

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. It's the law. Do they understand that all have to do this? Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[26] After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." [27] Most states require this. It is not new. In fact, Florida's statutory training provisions are among the highest in the nation. Such statutory direction could help other states ensure uniform instruction of poll workers.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

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

[25] The Century Foundation, op. cit.

[26] 8 Colo. Code Regs. § 1505-1, Rule 7.1.

[27] 2005 N.M. Laws 270 page no. 4-5.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [28] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[29]

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.[30] Seems like most states require training; do they have data on that? Florida's statutory training provisions among the strongest in the nation.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."[31] Nonetheless, the *Panio v. Sutherland*[32] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the

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

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

[30] 10 Ill. Comp. Stat. Ann. 5/18A-10(b). Indiana requires that the precinct election board give the ballots to the Inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4

[31] The Century Foundation, op. cit.

[32] 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.[33]

2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct. [34] The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report. EAC Chairman: does not agree w/ this recommendation. It does not take into account for local offices that would not be voted upon w/ such practices. Voters would then not be directed or go to their correct polling place to cast a ballot.

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location. [35] Can the best practice be to send voter to correct precinct – if its in the same building as suggested in this recommendation. Why disenfranchise voter from voting on a local race?

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed

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[33] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama – 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)_(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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

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

publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[36]

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

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

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to

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[36] 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available. Why is it suggested that completing eligibility evaluations are more critical in presidential elections? What about gubernatorial elections?

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public. The process *not* the names since by law they cannot be revealed.

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

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

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations (what is meant by national quality organizations? Examples?) to evaluate the provisional ballot process within the broader context of the electoral system.

Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.

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

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

Conclusion -- Research-based, continuing improvements for provisional voting are needed (This section should be the first part of the document)

The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

(Should this section be put under a Research Methodology section at the beginning?)

To answer those questions, the Eagleton-Moritz team undertook the following research efforts:

1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.

3. Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approached to voter identification
4. Collection and review of the provisional voting statutes and regulations in all 50 states.
5. Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research-based recommendations provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states moved forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

ATTACHMENT 1 – Characteristics of the Provisional Voting Process

Classification of the States

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

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

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

Please note that:

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

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

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

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

New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting[37] and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

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

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as "old" states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

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

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[37] This study can be found at: http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf.

Table 1
CATEGORIZATION OF STATES -- Old vs New

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

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[38] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

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

Table 2 (This table is no longer germane.)
CATEGORIZATION OF STATES -- Statewide Registration Database

Had Database 2004	No Database A-N	No Database N-W	HAVA Exempt or NA
Alaska	Alabama	Ohio	Iowa
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Idaho	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
16	27		8

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Out-of-Precinct Ballots

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

Table 3
CATEGORIZATION OF STATES – Counting Out-Of-Precinct Ballots

Out-of-Precinct	**In-Precinct Only**	**HAVA EXEMPT OR NA**
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado (after the court case)	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois (Not sure the law is that clear. Please check different counties did it differently.)	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

Voter Identification

We relied on Electionline studies, including the Voter Identification study[39] and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.[40] The five

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[39] This study can be found at: http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf

[40] In 2004, ElelctionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

Table 4

CATEGORIZATION OF STATES – Forms of Identification Required

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Give Name	Sign Name	Match Signature	Provide ID	Photo ID
Maine	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
New Hampshire	*Idaho*	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
Wisconsin	Michigan	West Virginia	Georgia	
Wyoming	Minnesota		Kentucky	
	Mississippi		Missouri	
	Nebraska		Montana	
	New Mexico		*North Dakota*	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
9	14	8	15	5

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Verification Method

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

Table 5

CATEGORIZATION OF STATES – Ballot Evaluation Methods

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis. No states have been italicized. Is this correct?

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

Data Collection

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

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

Table 6
Updated information by State

Received Updated Data	Did Not Receive Updated Data
California	Alabama
District of Columbia	Alaska[41]
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland[42]	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska[43]	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
26 States	**25 States**

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

[42] Maryland reported provisional ballots that were counted per county, but not number cast.

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

Data Differences

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.
Please explain the 0/8022 discrepancy under North Carolina "differences" since you indicate the info was not updated from the database.

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

ATTACHMENT 2 -- Data

Table 1 -- Provisional Voting Basic Statistics

States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Alabama	Affidavit	0.10	28.00
Alaska	PV	7.20	97.00
Arizona	PV	3.66	73.00
Arkansas	PV	0.35	48.00
California	PV	3.96	74.00
Colorado	LPV	1.84	76.00
Connecticut	None	0.03	32.00
Delaware	None	0.01	6.00
District of Columbia	PV	3.51	71.00
Florida	PV	0.13	36.00
Georgia	None	0.12	30.00
Hawaii	None	0.01	7.00
Idaho	EDR	EDR	EDR
Illinois	None	0.42	51.00
Indiana	None	0.02	15.00
Iowa	PV	0.53	52.00
Kansas	PV	2.68	70.00
Kentucky	Affidavit	0.01	15.00
Louisiana	None	0.12	40.00
Maine	EDR	EDR	EDR
Maryland	PV	1.33	65.00
Massachusetts	None	0.08	23.00
Michigan	Affidavit	0.07	58.00
Minnesota	EDR	EDR	EDR
Mississippi	Affidavit		
Missouri	None	0.12	40.00
Montana	None	0.08	55.00
Nebraska	LPV	1.71	78.00
Nevada	None	0.29	40.00
New Hampshire	EDR	EDR	EDR
New Jersey	LPV	1.96	55.26
New Mexico	PV	1.16	57.00
New York	PV	3.27	40.30
North Carolina	PV	1.21	55.00
North Dakota	NR	NR	NR
Ohio	LPV	2.20	78.00
Oklahoma	None	0.01	8.00
Oregon	PV	0.39	85.00
Pennsylvania	None	0.45	49.00
Rhode Island	None	0.23	46.00
South Carolina	PV	0.20	65.00
South Dakota	None	0.02	12.00
Tennessee	None	0.14	38.00
Texas	Affidavit	0.10	21.00
Utah	None	2.00	70.00
Vermont	None	0.01	37.00
Virginia	PV	0.02	17.00
Washington	PV	2.44	80.00
West Virgina	PV	1.11	63.00
Wisconsin	EDR	0.00	32.00
States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Wyoming	EDR	0.01	25.00

When did Eagleton get the information for Missouri. Missouri enacted provisional voting in 2002 and it is likely it was in place for the November 2002 election Pre-HAVA.

Eagleton's PV, LPV, EDR notations are confusing. In the instance of Colorado, the LPV designation (in the PV Status row - HAVA column is incorrect.) In Colorado the voter did not have to vote in the precinct.

Table 2 -- Characteristics of State Provisional Voting Systems

States	Was there a Statewide DB in 2004?	Are Outside Precincts Counted in Presidental Elections?	Verification Method	What is the time line for counting PV ballots?	Is this Review process open?
Alabama	No	No	Check address & registration	7 days	unclear
Alaska	Yes	Yes	Signature	15 days	limited
Arizona	Yes	No	Check address & registration	10 days	unclear
Arkansas	No	Yes	Check address & registration	15 days	Unclear
California	No	Yes	Signature	28 days	yes
Colorado	No	Yes	Check address & registration	12 days	limited
Connecticut	Yes	No	Affidavit	6 days	unclear
Delaware	Yes	Yes	Affidavit	Until Completion	limited
D.C.	Yes	No	Check address & registration	*	limited
Florida	No	No	Signature	11 days	yes
Georgia	Yes	Yes	Affidavit	7 days	unclear
Hawaii	Yes	Yes	Affidavit	6 days	limited
Idaho	No	EDR	EDR	*	unclear
Illinois	No	Yes	Affidavit	14 days	unclear
Indiana	No	No	Bring ID later	13 days	yes
Iowa	No	No	Bring ID later	2 days	unclear
Kansas	No	Yes	Bring ID later	*	limited
Kentucky	Yes	No	Affidavit	3 days	unclear
Louisiana	Yes	Yes	DOB and Address	4 days	yes
Maine	No	EDR	EDR	*	unclear
Maryland	No	Yes	Bring ID later	*	unclear
Massachusetts	Yes	No	Affidavit	4 days	unclear
Michigan	Yes	No	Bring ID later	14 days	unclear
Minnesota	?	EDR	EDR	14 days	Unclear
Mississippi	No	No	Affidavit	*	yes
Missouri	No	No	Check address & registration	14 days	limited
Montana	No	No	Bring ID later	*	unclear
Nebraska	No	No	Affidavit	7 days	limited
Nevada	No	No	Affidavit	7 days	unclear
New Hampshire	No	EDR	EDR	*	unclear
New Jersey	No	No	Bring ID later	28 days	yes
New Mexico	Yes	Yes	Bring ID later	10 days	unclear
New York	No	No	Affidavit	10 days	yes
North Carolina	No	Yes	Varies	7 days	yes
North Dakota	NR	NR	NR	*	unclear
Ohio	No	No	Check address & registration	*	unclear
Oklahoma	Yes	No	Check address & registration	3 days	limited
Oregon	No	Yes	Signature	*	limited
Pennsylvania	No	Yes	Check address & registration	*	unclear
Rhode Island	No	Yes	Check address & registration	*	yes
South Carolina	Yes	No	Check address & registration	4 days	unclear
South Dakota	Yes	No	Affidavit	3 days	unclear
Tennessee	No	No	Affidavit	48 hours	unclear
Texas	No	No	Bring ID later	7 days	unclear
Utah	No	Yes	Bring ID later	*	unclear
Vermont	No	Yes	Affidavit	2 days	unclear

States	Was there a Statewide DB in 2004?	Are Outside Precincts Counted in Presidental Elections?	Verification Method	What is the time line for counting PV ballots?	Is this Review process open?
Virginia	No	No	Affidavit	7 days	limited
Washington	No	Yes	Check address & registration	*	yes
West Virgina	Yes	No	Check address & registration	30 days	unclear
Wisconsin	No	No	Bring ID later	*	unclear
Wyoming	No	No	Affidavit	*	unclear

* Data to come on timeline classifications for these remaing states.

[redacted]

Table 4 -- Litigation and Statues

States	Litigation pre-2004 election?	Litigation post-2004 election?	Were clarifying PV regulations promulgated post election 2004?	Type of Clarifications
Alabama				
Alaska				
Arizona		Yes	Yes	Voter ID
Arkansas			Yes	Wrong precinct
California				
Colorado	Yes	Yes	Yes	Wrong precinct, timeline, counting
Connecticut				
Delaware				
D.C.				
Florida		Yes	Yes	Timeline, eligibility
Georgia			Yes	Voter ID
Hawaii				
Idaho				
Illinois				
Indiana			Yes	Voter ID, timeline, counting
Iowa				
Kansas				
Kentucky				
Louisiana			Yes	Counting
Maine				
Maryland				
Massachusetts				
Michigan		Yes		
Minnesota				
Mississippi				
Missouri				
Montana			Yes	Eligibility
Nebraska				
Nevada				
New Hampshire				
New Jersey				
New Mexico			Yes	Counting
New York		Yes		
North Carolina		Yes	Yes	Wrong precinct, counting
North Dakota				
Ohio	Yes	Yes		
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota				
Tennessee				
Texas				
Utah				

States	**Litigation pre-2004 election?**	**Litigation post-2004 election?**	**Were clarifying PV regulations promulgated post election 2004?**	**Type of Clarifications**
Vermont				
Virginia			Yes	Timeline, voter notification
Washington	Yes	Yes	Yes	Voter ID, timeline, counting
West Virgina				
Wisconsin				
Wyoming				

Table 3 -- Information for Voters

Provided on State Elections Website?					
States	**PV Requirements**	**VID Requirements**	**Registration Verification**	**Precinct Verification**	**Notification of Voters**
Alabama	No	Yes	No	No	Phone
Alaska	No	Yes	No	Yes	Phone
Arizona	No	No	No	No	Counties
Arkansas	Yes	No	No	No	Counties
California	Yes	No	No	Yes	Counties
Colorado	Yes	Yes	No	No	Counties
Connecticut	Yes	Yes	No	No	Phone
Delaware	Yes	No	No	Yes	Website
D.C.	Yes	No	Yes	Yes	Website
Florida	No	Yes	No	No	Counties
Georgia	No	Yes	Yes	Yes	Counties
Hawaii	No	Yes	No	Yes	Phone
Idaho	EDR	Yes	No	No	EDR
Illinois	Yes	No	No	No	Website
Indiana	No	No	No	No	Phone
Iowa	Yes	Yes	No	No	Mail
Kansas	Yes	No	No	No	Counties
Kentucky	Yes	No	Yes	Yes	Website
Louisiana	Yes	No	No	Yes	Phone
Maine	EDR	Yes	No	Yes	EDR
Maryland	Yes	Yes	No	No	Website/Phone
MA	Yes	No	No	Yes	Phone
Michigan	Yes	Yes	Yes	Yes	Mail
Minnesota	EDR	Yes	No	Yes	EDR
Mississippi	No	No	No	No	Counties
Missouri	Yes	Yes	No	No	Phone
Montana	No	Yes	No	No	Mail
Nebraska	No	No	No	No	Website/Phone
Nevada	No	No	No	No	Website/Phone
New Hampshir	EDR	No	No	No	EDR
New Jersey	Yes	Yes	No	No	Website/Phone
New Mexico	Yes	Yes	No	No	Phone
New York	No	No	No	No	Mail
North Carolina	No	No	Yes	Yes	Website
North Dakota	NR	Yes	NR	No	NR
Ohio	Yes	Yes	No	No	Phone
Oklahoma	No	Yes	No	No	Phone
Oregon	No	No	No	No	Phone
Pennsylvania	Yes	Yes	No	No	Phone
Rhode Island	Yes	Yes	No	No	Website
South Carolina	Yes	Yes	Yes	No	Website
South Dakota	Yes	No	No	Yes	Mail
Tennessee	No	No	No	No	Mail
Texas	Yes	Yes	No	No	Mail
Utah	Yes	Yes	No	Yes	Phone
Vermont	No	Yes	No	Yes	Phone
Virginia	Yes	Yes	No	Yes	Phone
Washington	No	Yes	No	No	Counties
Provided on State Elections Website?					
States	**PV Requirements**	**VID Requirements**	**Registration Verification**	**Precinct Verification**	**Notification of Voters**
West Virgina	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:42 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Survey report

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:41 AM -----

"John Weingart"
[redacted]
09/30/2005 03:02 PM
Please respond to
[redacted]

To "Karen Lynn-Dyson" [redacted]
cc
Subject Survey report

Provisonal Voting Survey Report.doc Karen - Thanks for the very helpful phone call. Attached is the Survey
Report. Let me know if you have trouble opening it or need any clarification or further information. Thanks and have a good weekend.

John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

[redacted]

[redacted]

[redacted]

Deliberative Process Privilege

NATIONAL SURVEY
OF
LOCAL ELECTION OFFICIALS' EXPERIENCES WITH PROVISIONAL VOTING

Conducted by:
Eagleton Institute of Politics

Conducted by:
THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Eagleton Institute of Politics
Center for Public Interest Polling

Data Collection:
July-August 2005

NATIONAL SURVEY
OF
LOCAL ELECTIONS OFFICIALS' EXPERIENCES WITH PROVISIONAL VOTING

TABLE OF CONTENTS

PAGE

APPENDICES:

EXECUTIVE SUMMARY: NATIONAL SURVEY OF LOCAL ELECTION OFFICIALS' EXPERIENCES WITH PROVISIONAL VOTING

To assess and improve the experiences of local elections officials with provisional voting, the Eagleton Center for Public Interest Polling (ECPIP) at the Eagleton Institute of Politics, Rutgers University conducted a national survey of local elections officials. Telephone interviews were conducted between July 21 and August 4, 2005 with a random sample of 400 local election officials. The sample of local election officials were drawn from counties, or equivalent election jurisdictions such as boroughs, municipalities, parishes, towns or cities. The sample of local election officials was then stratified according to when the state had enacted provisional voting systems -- before or after the passage of the Help America Vote Act of 2002 (HAVA) -- as well as the population size of the voting jurisdiction. Those states that offered voters lost in the system the opportunity to cast a ballot pre-HAVA (2002) were considered "old provisional voting states"; and the states where voters not found on the registration list were not offered any recourse and thus, were not permitted to vote in the 2000 Election were labeled "new provisional voting states."

Further adjustments were made to take into consideration the population size of the voting jurisdiction. The "Old" and "New" states were separated into three categories – small, medium, and large – based on the population size of the voting jurisdiction. A voting jurisdiction with a population of 49,999 or less was considered small, 50,000 to 199,999 regarded as medium, and large consisted of 200,000 or more. This sampling frame yielded 400 cases (196 Old; 204 New)[1] consisting of six sample types: New Small (n=83), Old Small (n=71), New Medium (n=83), Old Medium (n=75), New Large (n=38), and Old Large (n=50).

The survey addressed the following topics: experience with the administration of provisional voting system, state guidance for implementing provisional voting, implementing provisional voting, general perceptions, and recommendations for the future. This Executive Summary provides an overview of key findings from the study.

Experiences with Provisional Voting System in Jurisdiction

Survey participants were asked a number of questions regarding their general experience with provisional voting.

- A majority of the "New" states' election officials (62%), and nearly twice as many as the "Old" (33%), indicated that "100 or less ballots" were cast in the election jurisdiction. A significantly larger percentage (14%) of the "Old" (28%) estimated that "between 100 to just under 500" provisional ballots were cast.
- Most (61%) of the "Old" states reported that "A lot" of these provisional ballots were counted compared to only 19 percent for the "New" states. A

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[1] At the studies conclusion it was determined that Rhode Island's affidavit voting system did not meet the criteria for placement in the Old State status and thus, the state was reassigned as "New." The reassignment of local election respondents representing Rhode Island resulted in a 49 (Old)/51 (New) split, rather than half of the sample being drawn from "Old" and half from "New." Unlike the other states (AL, KY, MI, MS, TX) with affidavit voting systems in place pre-HAVA, Rhode Island did not offer voters any real recourse to cast a ballot if the individual's name was not listed on the registration rolls. Instead, the state allowed voter's claiming eligibility, but not found on the registration rolls, to sign an affidavit enabling the election official to call the central registrar to verify the voter's eligibility. Only if the voter's name was found on the list was he or she permitted to cast a ballot.

much larger percentage of the "New" subgroup felt that only "Some" (32%) or "Very Few" (32%) provisional ballots were actually counted.

- A sizeable majority of both subgroups (Old=64%, New=77%) attributed the <u>most</u> need for the use of provisional ballots in their jurisdiction to "individual's name not listed on the voter registration rolls."
- More than 7-in-10 in both subgroups agreed that "individuals who were not registered at the time of casting their provisional ballots" constituted the most important reason that these ballots were not validated and counted in their jurisdiction.

<u>State Guidance for Implementing Provisional Voting</u>

- A sizeable majority of both subgroups (Old=85%, New=83%) received provisional voting instruction from their state governments.
- Appreciable differences in the type of instruction received involved "whether the provisional ballot could be used as an application to update the voter's registration" (Old=74%; New 59%); "guidelines for determining which provisional ballots were to be counted" (Old=87%; New=94%); and "how to design the structure of the provisional ballot (Old=71%; New 57%)."
- Overall, 98 percent of both subgroups found the voting instructions they received from the state government useful.

<u>Implementing Provisional Voting in Jurisdiction</u>

- When asked to describe the instructions or information provided to poll workers to help determine voters correct precinct or polling place, both subgroups employed various strategies including access to a list of eligible voters (Old=81%; New 80%), dedicated telephone line for poll workers (Old=93%; New=91%), and additional staff such as "greeters" (Old=46%; New=42%). Very few election officials in both (Old=11%, New=12%) reported the existence of a statewide voter registration database.

- A much larger percentage (70%) of "Old" states' election officials compared with 50 percent of the "New" used maps to help identify correct polling locations.
- 14 percent of all the election officials said that they did not provide written procedures or training to poll workers for the counting of provisional ballots. However, overall both subgroups felt that the administration of provisional voting in their jurisdiction was a success on all accounts.
- A variety of measures were employed to enable voters to determine if their provisional ballots were counted. In both subgroups the most widely used method was "the main telephone for the local or county election office" with 66 percent of the New compared to 75% of the Old indicating this method was provided.
- The measure least cited for voters to determine if their provisional ballots were counted was "email notification." Only 10% reported that the election jurisdiction offered voters this opportunity.

General Perceptions

- Close to half (40%) of the election officials felt more training for poll workers was needed.

- 39 percent of the "New" states' election officials agreed that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted compared to 28% of the "Old".
- 13 percent more of the election officials from "New" states (39%) reported that more time was needed to implement provisional voting procedures.
- Only about half (56%) of the "New" states' election officials reported the provisional voting system was easy to implement while 73 percent from the "Old" found this to be the case.
- Seventeen percent more of the "Old" states' election officials (75%) agreed that the provisional voting system in their polling jurisdiction enabled more people to vote.

Recommendations for the Future

Survey participants were asked a number of questions regarding their general level of agreement with several statements regarding provisional voting.

- More election officials from "Old" states agreed that provisional voting sped up and improved polling place operations on Election Day (Old=53%; New=41%); and that the process helped election officials maintain more accurate registration databases (Old=63%; New=38%).
- 60 percent of the "New" states' election officials agreed that provisional voting created unnecessary problems for election officials and poll workers, compared with only 42% of the "Old."

- A majority of both subgroups agreed that "there is a need to offer voters the opportunity to cast provisional ballots." However, a 19 percent differential exists between the two subgroups (Old=81%; New=62%).
- A slightly larger percentage (9%) of the "Old" states' election officials (93%) felt that the provisional voting system in their polling jurisdiction was a success.
- Forty percent of the local election officials felt that the most effective way to increase the number of provisional ballots validated and counted in an election would be to administer provisional voting in a central location rather than at individual polling places.
- When asked what would be <u>most effective</u> in reducing the number of provisional ballots cast in an election, most (28%) of the local election officials chose providing a state sponsored website for individuals to check registration status online before going to the polling place. A slightly smaller number (26%) favored having a statewide voter registration database available at polling places.

CHAPTER 1

INTRODUCTION

A. Project Background and Objectives

To assess and improve the experiences of local election officials with provisional voting, the Eagleton Center for Public Interest Polling (ECPIP) at the Eagleton Institute of Politics, Rutgers University conducted a national survey of local elections officials.

The study was designed to examine the experiences, attitudes, and general impressions of local election officials with implementing provisional voting. Specifically, the study sought to ascertain the type of information, guidance, and training local election officials received from the State government in administering provisional voting, and how the information, guidance, and training was then distributed to poll workers and voters.

B. Summary of the Research Methodology

The survey involved telephone interviews conducted between July 21 and August 4, 2005 with a random sample of 400 local election officials. The sampling error for this total sample of 400 is ±4.9 percent at a 95 percent confidence level. Of these local election officials, 196 were selected to represent "old provisional voting states" and 204 for "new provisional voting states."[2] These subgroups have a sampling error of ±6.9 percent for the "New" and ±7.0 for the "Old" at a 95 percent confidence level.

Sampling error is the probability difference in results between interviewing everyone in a population versus interviewing a scientific sample taken from that population. Sampling error does not take into account any other possible sources of error inherent in any study of

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[2] See footnote 1.

public opinion. A more comprehensive description of the research methodology is included in Appendix A.

C. Profile of Survey Participants

Table 1.1 provides a profile of survey participants by status including the entire sample of counties or equivalent and the subgroups within the "Old" or "New" status. The subgroup definitions of "Old" and "New" were provided by a report released by Election Line titled "The Provisional Voting Challenge" (December, 2001). The "New" states include: Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Missouri, Montana, Nevada, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, and Vermont; and the "Old" states include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Washington D.C., Florida, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, and West Virginia.

D. Organization of the Report

The next chapter of this report examines the substantive survey results illustrated by statistical tables. The exact question wording precedes the table summarizing the percentages of the actual responses provided by the local election officials. In most cases the percentages on the tables read from top to bottom with the total equal to a 100 percent. In instances where there is statistical rounding, the total may be more or less than 100 percent.

The tables will also report the sample size "(n)" for each group referenced in the table. The "(n)" is the actual number of people in the group upon which the percentages are based. Readers should be aware of the "(n)" when referencing the percentages on a table. Smaller subgroups will have a higher margin of sampling error. Therefore, in some cases what may appear to be a large difference between groups is a result of the larger sampling error and may not be statistically significant.

Following the statistical tables there are four appendices. Appendix A provides additional information about the survey methodology so that interested readers may have a better understanding of the process used to obtain the data. Appendix B consists of the pre-notification letter explaining the purpose of the study and inviting local election officials to participate in the study if called. The text of the questions asked in the survey and used in the analysis of the data is contained in Appendix C. The verbatim responses (as recorded by the interviewers) to open-end questions included in the survey are found in Appendix D.

TABLE 1.1
PROFILE OF SURVEY PARTICIPANTS BY STATUS

	TOTAL	OLD PV STATES	NEW PV STATES
Gender			
--Male	29%	30%	28%
--Female	71	71	72
Title			
Administrator of Elections	10	5	14
Chairman of Elections	3	5	1
Clerk of Court	2	1	4
Commissioner of Elections	7	15	--
County Clerk	17	16	18
Director of Elections	16	20	12
Registrar of Elections	8	8	8
Secretary of Elections	3	1	5
Supervisor of Elections	7	7	8
Town Clerk	4	2	6
Other	25	23	27
Position			
--Hired	14	16	12
--Appointed	42	41	44
--Promoted	2	1	3
--Elected	42	42	42
--Other	1	1	1
Years Worked			
--Less than one year	1	2	1
--1-10 years	49	49	50
--11-20 years	34	37	32
--21-30 years	12	11	14
--31-43 years	3	3	4
Region			
--West	17	14	20
--South	29	28	30
--Midwest	46	48	44
--Northeast	9	11	7
Statewide Registration			
--Yes	34	20	48
--No	66	81	52
Battleground State			
--Yes	17	19	14
--No	84	81	86

TABLE 2.1
EXPERIENCE WITH PROVISIONAL VOTING SYSTEM IN JURISDICTION [Q.3-6]

3. What is your best estimate of the total number of provisional ballots cast in the 2004 election in your jurisdiction, whether they were ultimately counted or not? Your best estimate is fine.

	Old versus New		(n)
	Old	New	
1 to less than 100	33%	62%	(191)
Between 100 to just under 500	28	14	(82)
Between 500 to just under 1000	12	5	(35)
1000 or more	19	9	(57)
(VOL) None/Zero	7	9	(31)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .000 level.**

4. In your opinion, how many of these provisional ballots were counted – a lot, some, very few, or none at all?

	Old versus New		(n)
	Old	New	
A lot	61%	19%	(146)
Some	17	32	(90)
Very few	18	32	(91)
None at all	4	17	(38)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	---
	101	101	(369)

*****statistically significant at the .000 level.**

5. In your opinion, which one of the following, if any, created the most need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

	Old versus New		(n)
	Old	New	
Individual's name not listed on the voter registration rolls	64%	77%	(260)
FIRST TIME voters couldn't provide the proper identification	5	7	(21)
Voter's eligibility challenged	12	5	(30)
Registered voters could not provide the proper identification	4	7	(19)
(VOL) Other (SPECIFY)	14	4	(32)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	1	---	(1)
	102	102	(369)

*****statistically significant at the .01 level.**

6. In your opinion, which one of the following, if any, was the most important reason that provisional ballots cast in your jurisdiction were not validated and ultimately not counted in the 2004 Election?

	Old versus New		(n)
	Old	New	
Individual failed to provide the identification required to validate the provisional ballot	2%	3%	(10)
Signature on the provisional ballot did not match the signature on the registration form	1	---	(1)
Provisional ballot cast in the incorrect voting precinct	16	10	(48)
Individual was not registered	75	76	(280)
(VOL) All provisional ballots were validated and counted in 2004 Election	2	4	(12)
(VOL) Other (SPECIFY)	3	4	(13)
(VOL) Don't Know	1	2	(5)
(VOL) Refused	---	---	(---)
	100	99	(369)

TABLE 2.2
PRE-ELECTION EXPERIENCE:
STATE INSTRUCTION AND INFORMATION [Q.7-13]

7. Were provisional voting instructions provided by the state government for the 2004 Election?

	Old versus New		(n)
	Old	New	
Yes	85%	83%	(335)
No	14	17	(63)
(VOL) Don't know	1	---	(2)
(VOL) Refused	---	---	(---)
	100	100	(400)

8. Which of the following provisional voting instructions, if any, did you receive from the state government?

	Old versus New Old	 New	(n=335)
How to administer the provisional voting system	90%	91%	(303)
Who is eligible to vote using a provisional ballot	93	92	(310)
How individuals vote using a provisional ballot	90	85	(292)
The jurisdiction where individuals can vote by provisional ballot	78	80	(265)
Whether the provisional ballot could be used as an application to update the voter's registration*** *****statistically significant at the .01 level.**	74	59	(222)
How to train poll workers to process provisional ballots	89	88	(295)
How to provide voters with the opportunity to verify if their provisional ballot was counted	92	90	(304)
Guidelines for determining which provisional ballots are to be counted*** *****statistically significant at the .05 level.**	87	94	(304)
Strategies to reduce the need for voters to use provisional ballots	54	54	(182)
How to design the structure of the provisional ballot*** *****statistically significant at the .05 level.**	71	57	(213)
Other (VOL)	---	---	(---)
All of the above (VOL)**	---	---	(22**)
None of the above (VOL)	---	---	(---)
Don't Know (VOL)	1	2	(5)
Refused (VOL)	---	---	(---)

**included in totals above.

9. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on the jurisdiction where individuals can vote by provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION ON THE JURISDICTION WHERE INDIVIDUALS CAN VOTE BY PROVISIONAL BALLOT IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	3%	(6)
Useful	96	95	(253)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	---	---	(---)
	100	100	265

10. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to provide voters with the opportunity to verify if their provisional ballot was counted -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION ON HOW TO PROVIDE VOTERS WITH THE OPPORTUNITY TO VERIFY IF THEIR PROVISIONAL BALLOT WAS COUNTED IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	1%	(4)
Useful	97	96	(293)
(VOL) Don't Know	1	3	(7)
(VOL) Refused	---	---	(---)
	100	100	(304)

11. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing guidelines for determining which provisional ballots are to be counted -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION FOR ESTABLISHING GUIDELINES FOR DETERMINING WHICH PROVISIONAL BALLOTS ARE TO BE COUNTED IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	3%	(8)
Useful	97	96	(293)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	---	---	(---)
	100	100	(304)

12. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing strategies to reduce the need for voters to use provisional ballots -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION FOR ESTABLISHING STRATEGIES TO REDUCE THE NEED FOR VOTERS TO USE PROVISIONAL BALLOTS IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	7%	8%	(13)
Useful	90	92	(166)
(VOL) Don't Know	3	---	(3)
(VOL) Refused	---	---	(---)
	100	100	(182)

13. Thinking generally, overall how useful were the provisional voting instructions you received from the state government -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	1%	1%	(4)
Useful	98	98	(324)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	100	100	(330)

TABLE 2.3
IMPLEMENTATION OF INSTRUCTIONS AND DISTRIBUTION OF INFORMATION TO ELECTION EMPLOYEES [Q.14-21]

14. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

	Old versus New		
	Old	New	(n=400)
Access to a list of eligible voters in the jurisdiction	81%	80%	(322)
Telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	90	93	(365)
Maps of adjacent precincts for poll workers to help voters locate their residence and corresponding polling place*** *****statistically significant at the .001 level.**	70	50	(239)
Additional staff such as "greeters" at polling places to direct voters to the correct polling location	46	42	(176)
Statewide voter registration database available at polling places	11	12	(46)
Other (VOL)	1	---	(1)
None of the above (VOL)	2	1	(6)
Don't Know (VOL)	---	1	(2)
Refused (VOL)	---	---	(---)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?]

(READ AND ROTATE Q.15 – Q.21)

15. Providing training to poll workers on how to administer provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	1%	2%	(5)
Successfully	96	95	(382)
(VOL) Didn't perform this activity	3	3	(11)
(VOL) Don't Know	---	1	(2)
(VOL) Refused	---	---	(---)
	100	101	(400)

16. Providing written procedures to poll workers on how to administer provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	2%	(7)
Successfully	93	94	(373)
(VOL) Didn't perform this activity	4	3	(14)
(VOL) Don't Know	2	1	(5)
(VOL) Refused	---	1	(1)
	101	101	(400)

17. Providing your local election officials with written procedures on the casting of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	1%	(4)
Successfully	95	94	(378)
(VOL) Didn't perform this activity	2	4	(13)
(VOL) Don't Know	2	1	(4)
(VOL) Refused	---	1	(1)
	101	101	(400)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?] (cont'd.)

18. Providing your local election officials with written procedures on the counting of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	1%	(5)
Successfully	81	85	(333)
(VOL) Didn't perform this activity	16	12	(56)
(VOL) Don't Know	2	1	(4)
(VOL) Refused	---	1	(2)
	101	100	(400)

19. Providing your local election officials training for the counting of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	1%	3%	(7)
Successfully	80	87	(334)
(VOL) Didn't perform this activity	18	10	(56)
(VOL) Don't Know	1	---	(2)
(VOL) Refused	---	1	(1)
	100	101	(400)

20. Making information available to help poll workers determine voters' assigned precinct or polling place.

	Old versus New		(n)
	Old	New	
Not successfully	2%	3%	(11)
Successfully	92	91	(367)
(VOL) Didn't perform this activity	5	5	(20)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	100	100	(400)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?] (cont'd.)

21. Providing <u>training</u> to help poll workers determine voters' assigned precinct or polling place.

	Old versus New		(n)
	Old	New	
Not successfully	2%	2%	(7)
Successfully	92	88	(360)
(VOL) Didn't perform this activity	6	8	(27)
(VOL) Don't Know	1	2	(6)
(VOL) Refused	---	---	(---)
	101	100	(400)

TABLE 2.4
POST-ELECTION EXPERIENCE:
COUNTING BALLOTS [Q.22-25]

22. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

(ACCEPT MULTIPLE RESPONSES; READ AND ROTATE LIST)

	Old versus New		(n=400)
	Old	New	
Notification by mail	50%	45%	(188)
Dedicated Toll-Free Telephone Hotline	42	36	(156)
Email notification	13	9	(43)
Website confirmation	21	24	(90)
Main telephone number for the local or county election office	75	66	(281)
All of the above (VOL)	**	**	**
None of the above (VOL)	3	6	(17)
Other (VOL)	1	1	(2)
Don't Know (VOL)	1	1	(3)
Refused (VOL)	---	---	(---)

**included in the totals above.

23. How confident are you that poll workers properly distributed provisional ballots to voters?

[Q23-25 - ASKED ONLY AMONG THOSE WHO GAVE BEST ESTIMATE OF TOTAL NUMBER OF PROVISIONAL BALLOTS CAST IN THE 2004 ELECTION (Q3=1-4)]

	Old versus New		(n)
	Old	New	
Not confident	4%	6%	(18)
Confident	93	93	(344)
(VOL) Don't Know	3	1	(7)
(VOL) Refused	---	---	(---)
	100	100	(369)

24. How confident are you that election officials accurately assessed and validated provisional ballots?

	Old versus New		(n)
	Old	New	
Not confident	2%	2%	(7)
Confident	95	95	(350)
(VOL) Don't Know	3	3	(10)
(VOL) Refused	1	1	(2)
	101	101	(369)

25. How confident are you that the validated provisional ballots were accurately included in the final vote count?

	Old versus New		(n)
	Old	New	
Not confident	1%	---	(1)
Confident	99	98	(363)
(VOL) Don't Know	1	2	(5)
(VOL) Refused	---	---	(---)
	101	100	(369)

TABLE 2.5
GENERAL PERCEPTIONS [Q.26-35]

26. Now I am going to read you a list of items, please tell me which one you believe presented the <u>biggest</u> challenge in implementing provisional voting in your jurisdiction for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

(READ AND ROTATE 1-4)

	Old versus New		(n)
	Old	New	
Training of poll workers	38%	42%	(160)
Length of time provided before the election to implement the provisional voting process	13	14	(53)
Clarity of instruction received from your State Government	5	8	(27)
Having enough staff at the polling place	9	14	(46)
(VOL) Other (SPECIFY)	5	3	(15)
(VOL) All of the above	2	3	(9)
(VOL) None of the above	26	16	(83)
(VOL) Don't Know	3	1	(7)
(VOL) Refused	---	---	(---)
	101	101	(400)

Please tell me how much you agree or disagree with the following statements about Provisional voting in your jurisdiction for the 2004 Election. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

(READ AND ROTATE Q.27 –Q.35)

27. More training was needed on how to administer the provisional voting process.

	Old versus New		(n)
	Old	New	
Disagree	54%	46%	(200)
Neither Agree nor Disagree	6	5	(22)
Agree	38	49	(174)
(VOL) Don't Know	2	---	(4)
(VOL) Refused	---	---	(---)
	100	100	(400)

28. More funding was needed to educate voters about their rights to cast a provisional ballot.

	Old versus New		(n)
	Old	New	
Disagree	50%	43%	(185)
Neither Agree nor Disagree	11	12	(45)
Agree	39	45	(168)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	101	101	(400)

29. More information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted.

	Old versus New		(n)
	Old	New	
Disagree	62%	50%	(222)
Neither Agree nor Disagree	8	8	(32)
Agree	28	39	(133)
(VOL) Don't Know	3	4	(13)
(VOL) Refused	---	---	(---)
	101	101	(400)

*****statistically significant at the .05 level.**

30. More <u>information</u> was needed for <u>poll workers</u> to determine the voter's assigned precinct and polling place.

	Old versus New		(n)
	Old	New	
Disagree	68%	63%	(261)
Neither Agree nor Disagree	7	5	(25)
Agree	23	29	(104)
(VOL) Don't Know	2	3	(10)
(VOL) Refused	---	---	(---)
	100	100	(400)

31. More <u>time</u> was needed to <u>implement</u> provisional voting procedures.

	Old versus New		(n)
	Old	New	
Disagree	66	55	(242)
Neither Agree nor Disagree	7	5	(24)
Agree	26	39	(130)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .05 level.**

32. The provisional voting system was <u>easy</u> to implement.

	Old versus New		(n)
	Old	New	
Disagree	24%	35%	(117)
Neither Agree nor Disagree	3	9	(25)
Agree	74	56	(258)
(VOL) Don't Know	---	---	(---)
(VOL) Refused	---	---	(---)
	101	100	(400)

*****statistically significant at the .01 level.**

33. The provisional voting system in my polling jurisdiction enabled more people to vote.

	Old versus New		(n)
	Old	New	
Disagree	19%	29%	(97)
Neither Agree nor Disagree	4	12	(32)
Agree	75	58	(266)
(VOL) Don't Know	2	1	(5)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .01 level.**

34. I feel that voters in my jurisdiction were provided adequate information to successfully cast a provisional ballot.

	Old versus New		(n)
	Old	New	
Disagree	3%	5%	(17)
Neither Agree nor Disagree	2	4	(12)
Agree	93	91	(368)
(VOL) Don't Know	2	---	(3)
(VOL) Refused	---	---	(---)
	100	100	(400)

35. Adequate support was provided to me to assist in the implementation of provisional voting.

	Old versus New		(n)
	Old	New	
Disagree	7%	11%	(37)
Neither Agree nor Disagree	2	8	(20)
Agree	91	81	(343)
(VOL) Don't Know	---	---	(---)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .01 level.**

TABLE 2.6

RECOMMENDATIONS
FOR THE FUTURE [Q.36-46]

36. Now I am going to read you a list of items. Please tell me which one you believe is the <u>most</u> important change needed in the implementation of provisional voting.

(RANDOMLY ROTATE 1-4)

	Old versus New		(n)
	Old	New	
More funding for poll worker training	24%	34%	(116)
More time for poll worker training	18	18	(72)
Clearer instruction from the Federal Government	19	18	(75)
Clearer instruction from the State Government	14	9	(47)
(VOL) Other (SPECIFY)	6	3	(19)
(VOL) All of the above	1	3	(7)
(VOL) None of the above	15	12	(55)
(VOL) No changes needed	2	1	(6)
(VOL) Don't Know	---	2	(3)
(VOL) Refused	---	---	(---)
	99	100	(400)

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

(READ AND ROTATE Q.37–Q.44)

37. A statewide voter registration database, accessible to poll workers on Election Day, would decrease the need for voters to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	43%	35%	(155)
Neither Agree nor Disagree	7	6	(26)
Agree	49	56	(210)
(VOL) Don't Know	2	3	(9)
(VOL) Refused	---	---	(---)
	101	100	(400)

38. A state-sponsored website designed for individuals to check registration status online, before going to the polling place on Election Day, would decrease the need for voters to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	24%	23%	(93)
Neither Agree nor Disagree	6	5	(22)
Agree	68	70	(277)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	1	---	(1)
	101	100	(400)

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat? (cont'd.)

39. Provisional voting speeds up and improves polling place operation on Election Day by resolving disputes between voters and poll workers.

	Old versus New		(n)
	Old	New	
Disagree	40%	55%	(190)
Neither Agree nor Disagree	6	3	(18)
Agree	53	41	(188)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	1	---	(1)
	101	100	(400)

40. Provisional voting helps election officials maintain more accurate registration databases.

	Old versus New		(n)
	Old	New	
Disagree	31%	49%	(161)
Neither Agree nor Disagree	4	11	(31)
Agree	63	38	(201)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .000 level.**

41. Provisional voting creates unnecessary problems for election officials and poll workers.

	Old versus New		(n)
	Old	New	
Disagree	52%	34%	(171)
Neither Agree nor Disagree	5	5	(20)
Agree	42	60	(206)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .01 level.**

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat? (cont'd.)

42. Provisional voting can be avoided by simplifying registration procedures.

	Old versus New		(n)
	Old	New	
Disagree	55%	43%	(195)
Neither Agree nor Disagree	6	5	(23)
Agree	38	50	(176)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	---	---	(---)
	101	100	(400)

43. There is a need to offer voters the opportunity to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	17%	31%	(98)
Neither Agree nor Disagree	2	6	(15)
Agree	81	62	(285)
(VOL) Don't Know	---	1	(2)
(VOL) Refused	---	---	(---)
	100	100	(400)

*****statistically significant at the .001 level.**

44. The provisional voting system in my polling jurisdiction was a <u>success</u>.

	Old versus New		(n)
	Old	New	
Disagree	5%	8%	(27)
Neither Agree nor Disagree	2	7	(18)
Agree	93	84	(353)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	101	100	(400)

*****statistically significant at the .05 level.**

45. Which one of the following do you think would be the <u>most effective</u> in increasing the number of provisional ballots validated and ultimately <u>counted</u> in an election?

(RANDOMLY ROTATE 1-3)

	Old versus New		(n)
	Old	New	
In-precinct provisional voting only	21%	18%	(79)
Provisional voting from a central location rather than in individual polling places	37	44	(161)
In-jurisdiction provisional voting only	21	18	(77)
(VOL) Other (SPECIFY)	1	3	(7)
(VOL) All of the above	1	1	(2)
(VOL) None of the above	15	8	(47)
(VOL) Don't Know	4	9	(27)
(VOL) Refused	---	---	(---)
	100	101	(400)

46. Which one of the following do you think would be the <u>most effective</u> in reducing the number of provisional ballots <u>cast</u> in an election?

(RANDOMLY ROTATE 1-5)

	Old versus New		(n)
	Old	New	
Having a statewide voter registration database available at polling places	22%	30%	(105)
Providing additional staff such as "greeters" at polling places to direct voters to the correct polling location	6	6	(24)
Providing a state sponsored website to enable individuals to check registration status online before going to the polling place	30	27	(113)
Providing poll workers access to an updated printed list of eligible voters in the jurisdiction	5	5	(20)
Providing a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	14	18	(63)
(VOL) Other (SPECIFY)	---	1	(2)
(VOL) All of the above	4	3	(14)
(VOL) None of the above	16	9	(51)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	---	1	(1)
	99	102	(400)

APPENDIX A:

SURVEY METHODOLOGY

I. INTRODUCTION

This survey represents a joint venture of two programs – the Eagleton Institute of Politics, Rutgers University and the Eagleton Institute's Center for Public Interest Polling (ECPIP). This survey was designed to assess and improve the experiences of local elections officials with provisional voting.

II. QUESTIONNAIRE DEVELOPMENT

The questionnaire was developed for telephone administration by ECPIP researchers in consultation with Eagleton staff. The draft questionnaire was pretested with a random group of local election officials that yielded five completes. Only minor changes were made from that version and no further pretest was needed.

The questionnaire interview length averaged 18.4 minutes. An annotated version of the final survey instrument is included in this report (see Appendix C).

The questionnaire was programmed into a CATI (Computer Assisted Telephone Interviews) software system know as Quancept. The system facilitates the loops, rotations, randomization, and complex skip patterns found in this survey instrument. The programming was extensively checked and all logical errors were corrected.

III. SAMPLE DESIGN

A random national sample was compiled based on information acquired from the State Board of Elections in each of the 50 States and the District of Columbia. In all, 3,820 local election officials were eligible to participate in the study. To enhance compliance rates, pre-notification letters were sent to 2,471 of the local election officials. These letters explained the study's objectives and asked for the officials' participation in the study if contacted by an interviewer. Overall, 1,018 were contacted by telephone to participate in the study and among these, a total of 400 local election officials agreed to participate in the study.

The "Old" and "New" states were separated into three categories – small, medium, and large – based on the population size of the voting jurisdiction. A voting jurisdiction with a population of 49,999 or less was considered small, 50,000 to 199,999 regarded as medium, and large consisted of 200,000 or more. The sample was designed to make sure that each of the six sample types: New Small (n=83), Old Small (n=71), New Medium (n=83), Old Medium (n=75), New Large (n=38), and Old Large (n=50) were represented in the study. Overall, the survey yielded a response rate of 30 percent for the "Old" state sample and 53 percent for the "New" state sample.

APPENDIX B:

PRE-NOTIFICATION LETTER

DATE

NAME
TITLE
ADDRESS
CITY STATE ZIP

Dear NAME,

Rutgers, The State University of New Jersey, is conducting a national survey of elections officials' experiences with provisional voting in the 2004 national election. Through this survey we will learn the perspective of those who administer elections. It will improve our understanding of the process as we complete a broad research project on provisional voting in the context of effective election administration, voter access, and ballot security. The findings of the project will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006.

The EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan, federal agency that provides federal funds to states to upgrade voting systems and improve election administration. The EAC publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration. The EAC is funding the research project.

Participants in this study will be selected randomly and asked to share their experiences administering the provisional voting process in the 2004 election. The study will be conducted July 18th through August 5th. During that period a survey researcher <u>may</u> call you if you are, in fact, chosen at random from a national list of election officials. The researcher will ask you questions about your experience with provisional voting, your evaluation of the process, and your recommendations to improve it. The survey will take approximately 10-15 minutes. All of your answers will be completely confidential, and no statement or comment you make will be ascribed to you.

At the conclusion of the research project, we will present a report to the EAC including analysis of provisional voting procedures as well as recommendations for future practices and procedures. The guidance document based on our research will be published by the EAC in the Federal Register for public review and comment, and the EAC will hold a hearing on the guidance document this fall before adopting it.

Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We hope you will participate if called. Thank you for your consideration and interest.

Sincerely,

[scanned signature]

Ruth B. Mandel
Director
Board of Governors Professor of Politics

APPENDIX C:

ANNOTATED QUESTIONNAIRE

PROVISIONAL VOTING SURVEY

Sample: Local Elections Officials
National sample: 400 telephone interviews

Draft Version: July 19, 2005

Initial Screener

Hello, my name is ________________ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. May I please speak to [INSERT NAME FROM SAMPLE]?

[IF UNSURE WHO THIS INDIVIDUAL IS – ASK:]

May I please speak to the individual who was responsible for overseeing voting procedures for the 2004 election at the county, borough, municipality, or parish level such as the Registrar of Elections, County Clerk, Commissioner of Elections, Director of Elections, Administrator of Elections, or Clerk of Court?

[SKIP TO "CONSENT OF INDIVIDUAL DIFFERENT FROM SAMPLE CONTACT"]

Consent

Hello, my name is ________________ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. We recently sent you a letter requesting your participation in the confidential survey we are conducting with elections officials. Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We would very much like to include your opinions and would really appreciate it if you could assist us by providing as much information as you can to the best of your knowledge. You were randomly selected for the survey from a nationally representative list of election officials. We are not selling anything, and not asking for money.

The information you will be sharing today will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006. This information will be maintained at a secure site and your name will not be identified in the report. All your answers are completely confidential.

The survey should take no more than 10 or 15 minutes to complete.

Consent of Individual Different from Sample Contact

Hello, my name is ________________ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. We recently sent a letter to your office requesting participation in a confidential survey we are conducting with elections officials. Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We would very much like to include your opinions and would really appreciate it if you could assist us by providing as much information as you can to the best of your knowledge. You were randomly selected for the survey from a nationally representative list of election officials. We are not selling anything, and not asking for money.

The information you will be sharing today will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006. This information will be maintained at a secure site and your name will not be identified in the report. All your answers are completely confidential.

The survey should take no more than 10 or 15 minutes to complete.

IF NECESSARY: If you should have any questions about the study, you may contact the Research Project Coordinator, April Rapp, at the Eagleton Center for Public Interest Polling at 732-932-9384 ext. 261.

IF RESPONDENT DECLINES TO PARTICIPATE, ADDITIONAL PRODDING NEEDED:

--Your participation is very important because only 400 election officials have been randomly selected for this survey and your views will be used to provide provisional voting policy recommendations. We would be happy to fax you a letter outlining the study objectives. [If yes, can I please have your fax number?] (RECORD FAX NUMBER)

Screener

1. On Election Day, November 2nd, 2004 was it your responsibility to supervise the election at the county, borough, municipality, or parish level?

(n=400)

100%	YES	GO TO Q2
--	NO	GO TO Q1a
--	DON'T KNOW	TERMINATE
--	REFUSED	TERMINATE

1a. May I please have the name and phone number of the individual who was responsible for supervising the 2004 election at the county, borough, municipality, or parish level?

[RECORD NAME/PHONE NUMBER OF REFERRAL] (THANK AND TERMINATE)

Jurisdiction

2. What was your job title on Election Day, November 2nd, 2004?

(DO NOT READ – VOLUNTEER RESPONSE)

(n=400)

10%	Administrator of Elections
3	Chairman of Elections
2	Clerk of Court
7	Commissioner of Elections
17	County Clerk
16	Director of Elections
8	Registrar of Elections
3	Secretary of Elections
7	Supervisor of Elections
4	Town Clerk
25	Other (specify)
--	Don't Know
--	Refused

General: Provisional Voting

Now, I would like to ask you some questions about provisional voting in your jurisdiction.

3. What is your best estimate of the total number of provisional ballots cast in the 2004 election in your jurisdiction, whether they were ultimately counted or not? Your best estimate is fine.

(n=400)

48%	Less than 100	
21	Between 100 to just under 500	
9	Between 500 to just under 1000	
14	1000 or more	
8	None/Zero	**(GO TO Q7)**
1	Don't Know	
--	Refused	

(ASK ONLY IF Q3=1-4)

4. In your opinion, how many of these provisional ballots were counted – a lot, some, very few, or none at all?

(n=400)

40%	A lot
24	Some
25	Very few
10	None at all
1	Don't Know
--	Refused

5. In your opinion, which one of the following, if any, created the <u>most</u> need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

(READ AND ROTATE 1-4)

(n=369)

71%	Individual's name not listed on the voter registration rolls
6	<u>First time</u> voters couldn't provide the proper identification
8	Voter's eligibility challenged
5	Registered voters could not provide the proper identification
9	Other (specify)
2	Don't Know
--	Refused

6. In your opinion, which one of the following, if any, was the most important reason that provisional ballots cast in your jurisdiction were not validated and ultimately not counted in the 2004 Election?

(READ AND ROTATE 1-4)

(n=369)

3%	Individual failed to provide the identification required to validate the provisional ballot
--	Signature on the provisional ballot did not match the signature on the registration form
13	Provisional ballot cast in the incorrect voting precinct
76	Individual was not registered
3	All provisional ballots were validated and counted in 2004 election
4	Other (specify)
1	Don't Know
--	Refused

Pre-Election Experience: Instructions and Information Received (Content and Quality)

7. Were provisional voting instructions provided by the state government for the 2004 Election?

(n=400)

84%	Yes	**(GO TO Q8)**
16	No	**(GO TO Q14)**
1	Don't Know	**(GO TO Q14)**
--	Refused	

STATE GOVERNMENT INSTRUCTIONS AND INFORMATION

(ASK ONLY IF Q7=1)

8. Which of the following provisional voting instructions, if any, did you receive from the state government?

(ACCEPT MULTIPLE RESPONSES; ROTATE LIST)

(n=335)

	Yes	No
How to administer the provisional voting system	90%	10%
Who is eligible to vote using a provisional ballot	93	8
How individuals vote using a provisional ballot	87	13
The jurisdiction where individuals can vote by provisional ballot	79	21
Whether the provisional ballot could be used as an application to update the voter's registration	66	34
How to train poll workers to process provisional ballots	88	12
How to provide voters with the opportunity to verify if their provisional ballot was counted	91	9
Guidelines for determining which provisional ballots are to be counted	91	9
Strategies to reduce the need for voters to use provisional ballots	54	46
How to design the structure of the provisional ballot	64	37
Other (specify)	--	--
All of the above	7	93
None of the above	--	--
Don't know	2	99
Refused	--	--

(ASK ONLY IF Q8=4)

9. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on the jurisdiction where individuals can vote by provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

(n=265)

73%	Very useful
23	Somewhat useful
2	Not very useful
--	Not useful at all
2	Don't know
--	Refused

(ASK ONLY IF Q8=7)

10. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to provide voters with the opportunity to verify if their provisional ballot was counted -- very useful, somewhat useful, not very useful, or not useful at all?

(n=304)

77%	Very useful
20	Somewhat useful
1	Not very useful
--	Not useful at all
2	Don't know
--	Refused

(ASK ONLY IF Q8=8)

11. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing guidelines for determining which provisional ballots are to be counted -- very useful, somewhat useful, not very useful, or not useful at all?

(n=304)

80%	Very useful
16	Somewhat useful
2	Not very useful
1	Not useful at all
1	Don't know
--	Refused

(ASK ONLY IF Q8=9)

12. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing strategies to reduce the need for voters to use provisional ballots -- very useful, somewhat useful, not very useful, or not useful at all?

(n=182)

60%	Very useful
31	Somewhat useful
5	Not very useful
2	Not useful at all
2	Don't know
--	Refused

(ASK ONLY IF Q8=1-10)

13. Thinking generally, overall how useful were the provisional voting instructions you received from the state government -- very useful, somewhat useful, not very useful, or not useful at all?

(n=330)

76%	Very useful
22	Somewhat useful
1	Not very useful
--	Not useful at all
1	Don't know
--	Refused

Implementation of Instructions and Distribution of Information to Election Employees

Now I'm going to ask you some questions about poll worker training.

14. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

(ACCEPT MULTIPLE RESPONSES; READ EACH ITEM; AND ROTATE LIST)

(n=400)

	Yes	No
Access to a list of eligible voters in the jurisdiction	81%	20%
Telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	91	9
Maps of adjacent precincts for poll workers to help voters locate their resident and corresponding polling place	60	40
Additional staff such as "greeters" at polling places to direct voters to the correct polling location	44	56
Statewide voter registration database available at polling places	12	89
Other (specify)	--	--
None of the above	2	99
Don't know	--	--
Refused	--	--

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed:

(READ AND ROTATE Q15-Q21)

[PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?

15. Providing <u>training</u> to poll workers on how to <u>administer</u> provisional ballots.

(n=400)

69%	Very successfully
27	Somewhat successfully
1	Not very successfully
1	Not successfully at all
3	Didn't perform this activity
1	Don't Know
--	Refused

16. Providing <u>written</u> procedures to poll workers on how to <u>administer</u> provisional ballots.

(n=400)

71%	Very successfully
22	Somewhat successfully
1	Not very successfully
1	Not successfully at all
4	Didn't perform this activity
1	Don't Know
--	Refused

17. Providing your local election officials with <u>written</u> procedures on the <u>casting</u> of provisional ballots.

(n=400)

68%	Very successfully
27	Somewhat successfully
1	Not very successfully
--	Not successfully at all
3	Didn't perform this activity
1	Don't Know
--	Refused

18. Providing your local election officials with <u>written</u> procedures on the <u>counting</u> of provisional ballots.

(n=400)

65%	Very successfully
18	Somewhat successfully
1	Not very successfully
--	Not successfully at all
14	Didn't perform this activity
1	Don't Know
1	Refused

19. Providing your local election officials <u>training</u> for the <u>counting</u> of provisional ballots.

(n=400)

66%	Very successfully
17	Somewhat successfully
1	Not very successfully
1	Not successfully at all
14	Didn't perform this activity
1	Don't Know
--	Refused

20. Making <u>information</u> available to help poll workers determine voters' assigned precinct or polling place.

(n=400)

70%	Very successfully
22	Somewhat successfully
2	Not very successfully
1	Not successfully at all
5	Didn't perform this activity
1	Don't Know
--	Refused

21. Providing training to help poll workers determine voters' assigned precinct or polling place.

(n=400)

64%	Very successfully
26	Somewhat successfully
2	Not very successfully
--	Not successfully at all
7	Didn't perform this activity
2	Don't Know
--	Refused

Post-Election Experience: Counting Ballots

22. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

(ACCEPT MULTIPLE RESPONSES;READ AND ROTATE LIST)

(n=400)

	Yes	No
Notification by mail	47%	54%
Dedicated Toll-Free Telephone Hotline	39	62
Email notification	10	90
Website confirmation	22	78
Main telephone number for the local or county election office	70	30
All of the above	--	--
None of the above	4	96
Other (specify)	1	99
Don't Know	--	--
Refused	--	--

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(ASK Q23-Q25 ONLY IF Q3=1-4)

23. How confident are you that poll workers properly distributed provisional ballots to voters?

(n=369)

63%	Very confident
30	Somewhat confident
4	Not very confident
1	Not at all confident
2	Don't Know
--	Refused

24. How confident are you that election officials accurately assessed and validated provisional ballots?

(n=369)

75%	Very confident
20	Somewhat confident
2	Not very confident
--	Not at all confident
3	Don't Know
1	Refused

25. How confident are you that the validated provisional ballots were accurately included in the final vote count?

(n=369)

95%	Very confident
3	Somewhat confident
--	Not very confident
--	Not at all confident
1	Don't Know
--	Refused

General Perceptions

26. Now I am going to read you a list of items, please tell me which one you believe presented the biggest challenge in implementing provisional voting in your jurisdiction for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

(READ AND ROTATE 1-4)

(n=400)

40%	Training of poll workers
13	Length of time provided before the election to implement the provisional voting process
7	Clarity of instruction received from your State Government
12	Having enough staff at the polling place
4	Other (specify)
2	All of the above
21	None of the above
2	Don't Know
--	Refused

Please tell me how much you agree or disagree with the following statements about Provisional voting in your jurisdiction for the 2004 Election.

(READ AND ROTATE Q27 –Q35)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

27. More training was needed on how to administer the provisional voting process

(n=400)

18%	Agree strongly
25	Agree somewhat
6	Neither agree nor disagree
22	Disagree somewhat
29	Disagree strongly
1	Don't Know
--	Refused

28. More funding was needed to educate voters about their rights to cast a provisional ballot.

(n=400)

24%	Agree strongly
18	Agree somewhat
11	Neither agree nor disagree
22	Disagree somewhat
24	Disagree strongly
1	Don't Know
--	Refused

29. More information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted.

(n=400)

16%	Agree strongly
17	Agree somewhat
8	Neither agree nor disagree
22	Disagree somewhat
33	Disagree strongly
3	Don't Know
--	Refused

30. More information was needed for poll workers to determine the voter's assigned precinct and polling place.

(n=400)

8%	Agree strongly
18	Agree somewhat
6	Neither agree nor disagree
26	Disagree somewhat
39	Disagree strongly
3	Don't Know
--	Refused

31. More time was needed to implement provisional voting procedures.

(n=400)

16%	Agree strongly
17	Agree somewhat
6	Neither agree nor disagree
27	Disagree somewhat
33	Disagree strongly
1	Don't Know
--	Refused

32. The provisional voting system was easy to implement.

(n=400)

33%	Agree strongly
32	Agree somewhat
6	Neither agree nor disagree
15	Disagree somewhat
14	Disagree strongly
--	Don't Know
--	Refused

33. The provisional voting system in my polling jurisdiction enabled more people to vote.

(n=400)

40%	Agree strongly
27	Agree somewhat
8	Neither agree nor disagree
9	Disagree somewhat
15	Disagree strongly
1	Don't Know
--	Refused

34. I feel that voters in my jurisdiction were provided adequate information to successfully cast a provisional ballot.

(n=400)

70%	Agree strongly
22	Agree somewhat
3	Neither agree nor disagree
3	Disagree somewhat
2	Disagree strongly
1	Don't Know
--	Refused

35. Adequate support was provided to me to assist in the implementation of provisional voting.

(n=400)

57%	Agree strongly
29	Agree somewhat
5	Neither agree nor disagree
6	Disagree somewhat
3	Disagree strongly
--	Don't Know
--	Refused

Recommendations for the Future

36. Now I am going to read you a list of items. Please tell me which one you believe is the most important change needed in the implementation of provisional voting.

(RANDOMLY ROTATE 1-4)

(n=400)

29%	More funding for poll worker training
18	More time for poll worker training
19	Clearer instruction from the Federal Government
12	Clearer instruction from the State Government
5	Other: specify
2	All of the above
14	None of the above
2	No changes needed
1	Don't Know
--	Refused

In general, please tell me how much you agree or disagree with the following statements about provisional voting.

(READ AND ROTATE Q37-Q44)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

37. A statewide voter registration database, accessible to poll workers on Election Day, would decrease the need for voters to cast provisional ballots.

(n=400)

34%	Agree strongly
19	Agree somewhat
7	Neither agree nor disagree
20	Disagree somewhat
20	Disagree strongly
2	Don't Know
--	Refused

38. A state-sponsored website designed for individuals to check registration status online, before going to the polling place on Election Day, would decrease the need for voters to cast provisional ballots.

(n=400)

45%	Agree strongly
25	Agree somewhat
6	Neither agree nor disagree
9	Disagree somewhat
15	Disagree strongly
2	Don't Know
--	Refused

39. Provisional voting speeds up and improves polling place operation on Election Day by resolving disputes between voters and poll workers.

(n=400)

25%	Agree strongly
23	Agree somewhat
5	Neither agree nor disagree
18	Disagree somewhat
30	Disagree strongly
1	Don't Know
--	Refused

40. Provisional voting helps election officials maintain more accurate registration databases.

(n=400)

27%	Agree strongly
24	Agree somewhat
8	Neither agree nor disagree
16	Disagree somewhat
24	Disagree strongly
2	Don't Know
--	Refused

41. Provisional voting creates unnecessary problems for election officials and poll workers.

(n=400)

31%	Agree strongly
21	Agree somewhat
5	Neither agree nor disagree
19	Disagree somewhat
24	Disagree strongly
1	Don't Know
--	Refused

42. Provisional voting can be avoided by simplifying registration procedures.

(n=400)

28%	Agree strongly
16	Agree somewhat
6	Neither agree nor disagree
20	Disagree somewhat
29	Disagree strongly
2	Don't Know
--	Refused

43. There is a need to offer voters the opportunity to cast provisional ballots.

(n=400)

44%	Agree strongly
28	Agree somewhat
4	Neither agree nor disagree
8	Disagree somewhat
17	Disagree strongly
1	Don't Know
--	Refused

44. The provisional voting system in my polling jurisdiction was a <u>success</u>.

(n=400)

59%	Agree strongly
30	Agree somewhat
5	Neither agree nor disagree
3	Disagree somewhat
4	Disagree strongly
1	Don't Know
--	Refused

45. Which one of the following do you think would be the <u>most effective</u> in increasing the number of provisional ballots validated and ultimately <u>counted</u> in an election?

(RANDOMLY ROTATE 1-3)

(n=400)

20%	In-precinct provisional voting only
40	Provisional voting from a central location rather than in individual polling places
19	In-jurisdiction provisional voting only
2	Other (specify)
1	All of the above
12	None of the above
7	Don't Know
--	Refused

46. Which one of the following do you think would be the most effective in reducing the number of provisional ballots cast in an election?

(RANDOMLY ROTATE 1-5)

(n=400)

26%	Having a statewide voter registration database available at polling places
6	Providing additional staff such as "greeters" at polling places to direct voters to the correct polling location
28	Providing a state sponsored website to enable individuals to check registration status online before going to the polling place
5	Providing poll workers access to an updated printed list of eligible voters in the jurisdiction
16	Providing a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction
1	Other (specify)
4	All of the above
13	None of the above
2	Don't Know
--	Refused

Demographics (ASK ALL)

I only have a few more questions for statistical purposes....

D1. As election official were you hired, appointed, promoted, or elected to the position?

(n=400)

14%	Hired
42	Appointed
2	Promoted
42	Elected
1	Other/Specify
--	Don't know
--	Refused

D2. For how many years have you served as the election official? [CODE IN WHOLE NUMBERS – IF LESS THAN 1 YEAR RECORD AS "LESS THAN ONE YEAR"]

(n=400)

LESS THAN 1 YEAR	1%
1	4
2	7
3	5
4	5
5	7
6	4
7	5
8	3
9	3
10	7
11	2
12	5
13	3
14	5
15	7
16	4
17	1
18	4
19	2
20	3
21	1
22	2
23	2
24	1
25	1
26	1
27	2
28	2
29	1
30	1
31	--
32	--
33	1
34	1
35	1
36	--
38	--
43	--

D3. Interviewer please record gender.

71%	Female
29	Male

That completes our survey. Thank you very much for your time and cooperation.

APPENDIX D:

VERBATIM RESPONSES

*****VERBATIM EAGLETON NATIONAL SURVEY OF LOCAL ELECTIONS OFFICIALS'*****

2. What was your job title on Election Day, November 2nd, 2004?

Q2	ACCESSOR/RECORDER/COUNTY CLERK\REGISTAR OF VOTERS
Q2	ADMISTRATIVE ASSISTANT SUPERVISOR ELECTIONS
Q2	ASSISTANT ADMIN
Q2	ASSISTANT EXECUTIVE DIRECTOR OF ELECTION COMMISSION
Q2	ASSISTANT REGISTRAR
Q2	asst rgiter of voters
Q2	Asst. Registrar of Elections
Q2	auditer
Q2	auditor
Q2	chairwoman
Q2	chief clerk
Q2	Chief Elections Officer
Q2	clerk of county commisions
Q2	Clerk of Elections
Q2	CO-MANAGER
Q2	COLLECTOR |
Q2	county auditer
Q2	county auditor
Q2	county clerk election authority
Q2	COUNTY COMM CLERK
Q2	county election officer
Q2	COUNTY ELECTION OFFICER
Q2	county of registrar
Q2	democrat comissioner
Q2	DEPUPTY COMISSIONER
Q2	DEPUTY CLERK IN CHARGE OF ELECTIONS
Q2	DEPUTY CLERK SUPERVISOR
Q2	DEPUTY ELECTION OFFICER
Q2	DEPUTY ELECTIONS COMMISSIONER
Q2	Deputy General Register
Q2	dir of voter registration and elections
Q2	DIRECTION COMISSIONER
Q2	electioin supt.
Q2	ELECTION BOARD ADMIN

Q2	election board secretary
Q2	election deputy
Q2	ELECTION DIVISIONS MGR
Q2	election officer
Q2	ELECTION OFFICER
Q2	election official
Q2	ELECTION SUPER
Q2	election superintendant
Q2	election superintendent
Q2	ELECTION SUPERINTENDENT
Q2	election superitendent
Q2	Elections Admin
Q2	elections administrater
Q2	ELECTIONS SUP
Q2	EXEC DIRECTOR BOARD OF ELECTIONS
Q2	FULTON COUNTY CLERK AND RECORDER
Q2	General REegistar
Q2	general registrar
Q2	GENERAL REGISTRAR
Q2	IN CHARGE OF PROVISIONAL BALANCE
Q2	judge
Q2	Local Election Official
Q2	overseeres
Q2	Rebgistrar
Q2	Region 2 Election Supervisor
Q2	regisrtar of voters
Q2	registar of voter
Q2	registra of voters
Q2	registrar of voters
Q2	Registrar of Voters
Q2	REGISTRAR OF VOTERS
Q2	Republican election commishioner
Q2	Republican Elections Commisioner
Q2	Republican Registrar of Voters
Q2	SEC OF TULSA COUNTY ELECTION BOARD
Q2	senior clerk register assistant
Q2	sherriff
Q2	SPECIALIST /ELECTIONS COORDINATOR
Q2	SUPERINTENDENT
Q2	SUPERINTENDENT OF ELECTIONS
Q2	supt, of elections
Q2	voter of registrar
Q2	voter register
Q2	VOTER REGISTRATION ADMINISTRATOR

5. In your opinion, which one of the following, if any, created the most need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

Q5 a lot of ppl have moved from one town to another and they weren't registered
Q5 ADDRESS CHANGES
Q5 change of address
Q5 college students (ellab) registered voters couldnt get home to vote!!
Q5 fail to change the address
Q5 FAILED TO REPORT ADDRESS CHANGE SO IN WRONG PRECINCT
Q5 inspector error
Q5 MOST HAD MOVED OUT OF A DIFERENT JURISDICTION
Q5 moved and no address change
Q5 MOVING FROM ONE PRECINCT TO ANOTHER
Q5 not registered
Q5 NOT REGISTERED IN PROPPER PLACE - ADDRESS CHANGES
Q5 NOT REGISTERED WITHIN 5 YEARS
Q5 OUT OF PRECINCT
Q5 they have moved within the county
Q5 they sd they didn't get their ballot and some were military
Q5 Unreported Move - their name does not show on their new address' voting precinct
Q5 voter fail to update their registration
Q5 Voter going to wrong polling place
Q5 VOTER WENT TO INCORECT POLLING PLACE
Q5 voters moved
Q5 VOTERS MOVED
Q5 VOTERS MOVING FROM ONE COUNTY TO ANOTHER OR WITHIN THE COUNTY AND NOT UPDATING THEIR REGISTRATION
Q5 voters not registered
Q5 voters showed up to wrong precinct
Q5 voters voting in the wrong precinct
Q5 voters were at wrong precinct
Q5 wrong precient

6. In your opinion, which one of the following, if any, was the most important reason that provisional ballots cast in your jurisdiction were not validated and ultimately not counted in the 2004 Election?

Q6	b/c they were not voters..
Q6	Combination of not being registered, also individual voted incorrect precinct (else)no
Q6	Individual registered in wrong county
Q6	individual was not registered in the right state
Q6	judge did not put provisional envelopes in ballot box
Q6	MEDIA DID NOT UNDERSTAND WHAT PROVISIONAL VOTING
Q6	NO SIGNATURE AT ALL
Q6	none
Q6	pirch for 10 year skip and voting
Q6	POLL WORKER DID NOT COMPLETE FORM CORRECTLY(ELSE)NO
Q6	There was confusion due to the newness of the provisional ballot procedure
Q6	THEY WERE IN THE WRONG COUNTY COLLEGE STUDENTS REGISTERED INOTHER COUNTIES
Q6	were not completed properly\

14. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

Q14 NO POLL WORKERS IN OREGON

22. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

Q22 THERE WAS ONLY ONE AND HE WAS INFORMED IN PERSON

Q22 voters were given written documents informing them on how to inquire about their votes

26. Now I am going to read you a list of items, please tell me which one you believe presented the biggest challenge in implementing provisional voting in your jurisdiction for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

Q26	
Q26	access to the voters after the election
Q26	age of the poll workers
Q26	getting the poll workers to understand what I was explaining. Implementing the provisional ballot and the purpose of a provisisional ballot was the biggest challenge in getting the poll workers to understand what this meant.
Q26	having enoug ballots
Q26	having the voter get and understand the information
Q26	lack of awareness of voter's opportunity for provisional voting
Q26	MISREPRESENTATION OF PROVISIONSL BALLOTING WAS THE KEY PROBLEM
Q26	NOT ENOUGH TIME TO VALIDATE THE BALLOT AFTER ELECTION OFFICE
Q26	people saying go anywhere and get a provisional ballot.. it was falsified information given through newspapers and political parties
Q26	POLL WORKERS MISUNDERSTOOD WHAT PROVISIONAL BALLOTS WERE FOR / PUBLIC EDUCATION
Q26	state worker getting back to us
Q26	the staff, not enough
Q26	to verify that they were a valid provisional voter after the election the research was quuite involved and time consuming
Q26	verification

36. Now I am going to read you a list of items. Please tell me which one you believe is the <u>most</u> important change needed in the implementation of provisional voting.

Q36	accessibilty for the voters
Q36	CHANGES IN STATE LAW
Q36	clearer instructions from both state and federal on who can vote provisional ballots
Q36	clearer intruction to the voter
Q36	Elimation of provisional voting should be dumped
Q36	ELIMINATE IT
Q36	MAKING THE FEDERAL AND STATE GOVERNMENTS TO AGREE ON WHO SHOULD AND WHERE THEY CAST PROVISIONAL BALLOTS
Q36	more correct information from the media
Q36	MORE EDUCATION FOR VOTERS...GENERAL INFO EDUCATION
Q36	more funding in every aspect in provisional voting, it has become very costly and time consuming (else) if the polls have to close for any reason, anyone who has not voted has to use a provisional vote, it is very costly, at 40
Q36	more simpler
Q36	more technical work force (ellab) if we could provide a laptop.. we did not have this, we need help in recruiting... what I would like to see is vote centers for provisional ballots..
Q36	NOT ENOUGH TIME TO VALIDATE VOTE AFTER THE ELECTION
Q36	PUBLIC EDUCATION ON PROVISIONAL VOTING
Q36	REGISTERATION OF THE VOTERS, AND THE VOTERS BEING MORE AWARE OF THE VOTING PROCESS
Q36	they need to look at the whole system... the system does not allow enough time from the time the provisional ballots are cast and the time they are actually counted is 3 days... therefore we dont have enough time to inquire more
Q36	VOTER AND PUBLIC EDUCATION - VOTER NEEDS TO KNOW WHAT A PROVISIONAL BALLOT IS
Q36	voters need to be trained
Q36	VOTERS SHOULD EDUCATE THEMSELVES BETTER. THE INFORMATION IS AVAILABLE TO THEM.

45. Which one of the following do you think would be the most effective in increasing the number of provisional ballots validated and ultimately counted in an election?

Q45	DON'T WANT TO INCREASE
Q45	how to correct provisional to educate the public.
Q45	INCREASE PROVISIONAL VOTING IN REGULAR VOTING PLACES (ELSE)NO
Q45	NOT ENOUGH TIME FOR VALIDATION AFTER ELECTION
Q45	they need to have provisional voting in BOTH a central location and in-precient location as well
Q45	UPDATE REGISTRATION BEFORE DEADLINE
Q45	VOTERS TAKE RESPONSIBILITY FOR REGISTRATION

46. Which one of the following do you think would be the <u>most effective</u> in reducing the number of provisional ballots <u>cast</u> in an election?

Q46	advanced voting
Q46	VOTERS UPDATE REGISTRATION

D1. As election official were you hired, appointed, promoted, or elected to the position?

D1 elected then turned out to be appointed

D1 I WAS ELECTED AS A PROBATE JUDGE PART OF THAT JOB IS SUPERVISING ELECTIONS

D1 INHERITTED

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:41 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised materials for Sept. 6 Meeting

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:39 AM -----

"Tom O'neill"
[redacted]
09/03/2005 02:46 PM

To [redacted]
cc
Subject Revised materials for Sept. 6 Meeting

Karen,

The hard copy of the materials you received on Friday may have been missing the response to Question 4 (the copy I received did not include it). Several other typographical and other errors also became apparent when I reviewed it today. .

Attached is a revised version of the package that corrects those errors. Please rely on this version to prepare for the meeting on Tuesday. I will bring sufficient copies to hand out before the meeting.

Sorry for the errors.

Tom O'Neill

EAC BRIEFING0906.doc

EAGLETON INSTITUTE OF POLITICS

BRIEFING FOR THE EAC

PRELIMINARY FINDINGS ON PROVISIONAL VOTING

with

Summary responses to 6 Key Questions

September 6, 2005

Prepared by:
Eagleton Institute of Politics at Rutgers, The State University of New Jersey
Moritz College of Law at the Ohio State University

MEMORANDUM

TO: Commissioners and Staff of the EAC

FROM: Tom O'Neill, Eagleton Institute of Politics

DATE: September 3, 2005

RE: Briefing on Provisional Voting Research

The enclosed draft synthesizes our findings based on the research on provisional voting completed since the start of the project. It is organized as summary answers to the six key questions on topics of particular interest enumerated in the contract.

1) How did states prepare for the HAVA Provisional Voting requirement?
2) How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
3) How did litigation affect the implementation of Provisional Voting?
4) How effective was Provisional Voting in enfranchising qualified voters?
5) Did states and local processes provide for consistent counting of Provisional Ballots?
6) Did local election officials have a clear understanding of how to implement Provisional Voting?

Our discussion on the 6th will revolve around these draft, summary answers. Your comments and reactions to the material will provide direction --a basis for us to complete work on the final report and the preliminary guidance document. We seek the EAC's response and comments to ensure that the research is meeting the needs of Commissioners and staff.

We will also ask for the comments of the Peer Review Group on this draft to provide independent analysis of our approach and methods.

The following materials are enclosed as background for the presentation:

Summary responses to 6 Key Questions regarding Provisional Voting

Appendices:

a) Statistical Review of Provisional Voting in the 2004 Election
b) State Narratives on Provisional Voting
c) Memorandum: Provisional Voting Litigation by Issue
d) Memorandum: Provisional Voting Litigation by State
e) Memorandum: Provisional Voting Litigation

Question 1: How did states prepare for HAVA's provisional voting requirements?

HAVA required all states to develop a process for permitting individuals who state they are registered, eligible to vote and in the proper jurisdiction for voting but are not on the official registration list to do so by provisional ballot. It also directed states to provide a way for provisional voters to find out if their ballots were counted.

For the 25 states that had some form of provisional ballots before HAVA, meeting the requirements meant reviewing and revising, if necessary, their process for provisional voting. The 18 states that were new to provisional voting had to provide for provisional ballots by a new statute or administrative regulation and had to design procedures for pre-election, Election Day and post-Election Day activity. Preparation at the state level is described exhaustively in the collection of state statutes and regulations compiled in this research.

In addition to devising the provisional voting process, states had the responsibility to define "jurisdiction," adopt rules regarding the use of voter identification, and prepare a system to decide which provisional ballots cast should be counted. The states also had the responsibility of providing training or instruction for local election officials who would actually manage the provisional voting process, including training poll workers. Interviews with local election officials, at the county level in most states, provided information to assess how they prepared to administer the process.

Most, but not all, (84 percent) county-level election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states:

- Almost all of those officials received instruction from their state government on how to determine a voter's eligibility to receive a provisional ballot, and they felt the instructions provided were useful.
- Nine out of ten received instruction for providing voters the opportunity to verify if the provisional ballot had been counted as well as instruction establishing guidelines for counting provisional ballots.
- Two out of three received information on using a provisional ballot as an application to update the voter's registration.
- Only about half of those local election officials received instruction on strategies to reduce the need for voters to use provisional ballots.

Although almost all county-level election officials provided training or written instruction to precinct-level poll workers on how to administer provisional ballots, wide disparities existed in other areas of instructions or resources.

- Nine out of ten provided a telephone line for poll workers to speak to an election official with access to a list of eligible voters to determine voters' assigned precinct and polling place.
- Eight in ten furnished local poll workers with access to a list of eligible voters in the jurisdiction.
- Only about 1 in 10 (12 percent) made available to poll workers a statewide voter

registration database.

- Almost equally rare (14%) were training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in how the county-level officials prepared to comply with HAVA's requirement to provide voters a way to find out if their provisional ballots had been counted:

- Seven in ten of those officials provided the main telephone number for the local or county election office;
- About half (47 percent) used mail notification;
- Four in ten provided a dedicated toll-free telephone hotline;
- About 1 in 5 (22%) offered this information through a website, and about half that number offered email notification.

Question 2: How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?

In the 2004 election, 18 states were new to the process of provisional voting, while 25 others had experience with similar methods of "fail-safe voting." Local election officials in the "old" states felt more confident in their ability to administer the provisional voting process:

- Almost three-quarters (74%) of local election officials in the "old" states found implementing the provisional voting system was "easy," but that was true of just over half (56%) of officials in the "new" states.
- About half (49%) of officials in the "new" states felt that more training was needed on how to administer the provisional voting system. Less than 40% of officials in the "old" states felt that way.
- Nine out of ten local officials in the "old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "new" states.

In some functions there was little difference in the preparation for provisional voting by "old" and "new" states. For example, in both subgroups, about half (54%) of county-level officials received from their state governments little information about "strategies to reduce the need for voters to use provisional ballots." But for other functions, training varied widely in both type and amount between the two subgroups:

- More officials in "old" states (7 in 10) than "new" (6 in 10) received state instruction on the design of the provisional ballot.
- By a similar margin, more "old" state officials received instruction about using the provisional ballot as an application to update the voter's registration.

The "new" state officials believed that voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted, and they felt that more funding was needed to educate voters about their rights to cast a provisional ballot:

- Four out of ten officials in the "new" states, compared with 3 out of 10 in the "old" stated that more information should have been provided to voters about the jurisdiction in which the ballot had to be cast.
- Also, four out of ten in the "new" states felt that more time was needed compared with just over a quarter (26%) of those in "old" states.

When we move from preparation to performance, the importance of experience becomes sharply clear. In the "old" states, provisional ballots represented over 2% (2.11%) of the total vote. In the "new" states, that number was less than one-fourth of that, 0.47%. How the ballots were then evaluated also showed significant differences between "old" and "New." In ruling ballots legitimate and including them in the final vote, the "old" states averaged nearly double the number of the "new" states, 58% to 32%. In "old" states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the "new" states.

Question 3: How did litigation affect the implementation of Provisional Voting?

SUMMARY: Litigation just before the 2004 election upheld the principle that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes. This pre-election litigation also clarified that HAVA does not require states to count provisional votes cast in the wrong precinct. Otherwise, however, this pre-litigation occurred too late to shape significantly the way the states implemented provisional voting.

Lawsuits filed shortly after Election Day, which were designed to alter the outcome of a close election, were uniformly unsuccessful in this goal, although some of them had the ancillary effect of requiring the counting of some provisional ballots that would have been left uncounted. Thus, the experience of the 2004 election shows that litigation can be useful, not to change the outcome of a race, but to enhance the accuracy of the provisional voting process. This kind of accuracy-enhancing litigation is most beneficial the earlier it occurs in the process. The nation can anticipate more litigation before the 2006 and 2008 elections if states leave unaddressed some of the ambiguities and problems that surfaced in the 2004 election.

Although the enactment of HAVA in 2002 and its erratic implementation in the states during the ensuing two years provided ample opportunity for litigation designed to clarify its requirements concerning provisional voting, or otherwise challenge state laws and administrative procedures regarding provisional voting, such litigation did not develop until the eve of the November 2004 general election. By then, it was largely too late for litigation to affect the rules and procedures in place in advance of Election Day.

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

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

To a lesser extent there was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining whether these provisional voters already have voted an absentee ballot (in which case one would need to be ruled ineligible, in order to avoid double voting). But these decisions confirm the basic premise that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

After Election Day, there was litigation over provisional ballots in states where the outcome of specific races might turn on whether or not some of the provisional ballots cast were ruled eligible for counting. Moreover, the "placeholder" filing of similar lawsuits in Ohio – in anticipation that provisional ballots might have made a difference in the presidential election in that state – indicates that there would have been more litigation of this type had that race (or others) been closer. Although these placeholder lawsuits fizzled away once it was clear that provisional ballots in Ohio would not affect the result of the presidential election, the litigable issues remain capable of resurrection when they might make a difference in the future. Indeed, the League of Women Voters has already filed a major new lawsuit in Ohio, seeking proactive changes in the provisional voting system in advance of the next election in that state. (This effort to resolve these legal issues well before November 2006 is a salutary one, so that the judiciary does not struggle with complicated, sensitive questions at a frenzied pace, either in the last few weeks before Election Day or the first few weeks immediately after Election Day.)

The efficacy of these post-Election Day lawsuits was mixed. In New York, supporters of a Democratic candidate for a state senate seat prevailed in that state's highest court on the proposition that provisional ballots cast at the correct polling *site* but at the wrong precinct should be counted. (Many polling sites, particularly in urban locations, serve multiple precincts.) The New York high court, however, rejected the contention that provisional ballots at the wrong polling site must be counted. The court also rejected the proposition that a provisional ballot should count if another (regular) vote already had been cast in the name of the provisional voter (even if the provisional voter purported to offer proof that the other vote had been cast by an imposter). Finally, the court accepted the contention that a provisional ballot should count if the ballot's envelope was missing information as a result of a poll worker's clerical error. The upshot of these rulings was that the Democratic candidate reduced the Republican's margin of victory (from 58 to a mere 18 votes), but did not succeed in overturning the election result.

In North Carolina, post-election litigation over provisional ballots ultimately proved inconsequential as the state's legislature took matters into its own hands. The race for the state's Superintendent of Public Instruction turned on whether approximately 11,000 "wrong precinct" provisional ballots would be counted under state law. The state's Supreme Court ruled that they should not count, but the state's legislature disagreed and enacted a new law to supersede the supreme court's ruling. The election was finally resolved on August 23, 2005 – *43 weeks* after Election Day – making it the last settled statewide election from 2004. The length of time it took to resolve this dispute shows the dangers of leaving ambiguous provisions of state law concerning the counting of provisional ballots.

Washington suffered an even more celebrated, if slightly less protracted, dispute over the counting of provisional ballots in statewide race. Here, too, the effort to overturn the result of the race through a lawsuit was unsuccessful. Republicans went to court after their gubernatorial candidate, Dino Rossi, came up 129 votes short in the third (manual) count of the ballots (having come out ahead in the two previous – machine – counts). Among other problems, Republicans were able to show that this third count included 252 provisional ballots cast by individuals who could not be verified as registered voters. But because these provisional ballots had been mingled with regular ballots during the counting process, it no longer could be determined for which candidate these provisional ballots were cast. After a lengthy trial at which the Republicans attempted to show statistically that enough of these ineligible ballots would have been cast for the Democratic candidate to change the result of the election, the trial court rejected such statistical proof as improper under state law, and Rossi decided not to appeal the decision to state's supreme court. The ruling came on June 6, 2005 – 32 weeks after Election Day.

Perhaps Washington's plight was aberrational and uncontrollable: how were election officials supposed to predict – and, more important, how were they supposed to avoid – the problem of poll workers inappropriately feeding provisional ballots through the counting machines as if they were regular ballots? (For future elections, Washington has adopted a series of measure, including color-coding provisional ballots and making sure that their different shape and size prevents them from being read by the machines used to count regular ballots, in an effort to prevent a repeat of this particular problem.) The after-the-fact litigation certainly was unable to put the spilled milk back in the bottle. While the litigation put a spotlight on the failures of the electoral process in Washington in 2004, serving as a catalyst for future reforms, it did nothing to change the outcome of the 2004 election itself, except only to delay the conclusion of the process by more than six months. (The fact that the Democratic candidate, Christine Gregoire, who was certified the winner after the manual recount, was inaugurated as Governor and exercised the powers of the office during those six months evidently affected the willingness of a trial judge to overturn the results of the election.)

One earlier aspect of the litigation over provisional ballots in Washington did prove efficacious – and importantly so. In December 2004, during the recounting process (before certification of Gregoire as winner), it was discovered that 547 provisional ballots in King County had been rejected because they could not be matched with a signature in the county's current electronic database of registered voters, but that county officials had not attempted to match the signatures against original registration forms, older electronic files, or other available records. Upon this discovery, Democrats went to court arguing that state law required that the provisional ballots be verified against these additional records. The Washington Supreme Court unanimously agreed with this argument, vindicating the principle that provisional ballots are designed to protect voters against clerical errors affecting the accuracy of the state's updated registration list.

The state supreme court, however, rejected the Democrats' additional argument that different rates at which counties invalidated provisional ballots because the signature on the ballot did not match the signature on file was sufficient to establish an Equal Protection violation under the principles of *Bush v. Gore*. The different rates could be explained by factors other than the assumption that county officials were applying different standards when conducting signature matches. Since the counties were purporting to apply the same standard, and there was no definitive proof to the contrary, the court found no Equal Protection violation.

The Democrats did win another important procedural ruling early on in the post-election litigation in Washington. They sought – and obtained – public disclosure of the names of all individuals whose provisional ballots were rejected because their signatures did not match county records. This disclosure ultimately uncovered which provisional ballots had been rejected based on insufficient examination of county records.

CONCLUSIONS:

A review of all the litigation over provisional voting in connection with the 2004 election leads to the following tentative conclusions. First and foremost, litigation is more likely to be successful – and yield a public benefit – if its goal is simply to assure the accuracy of the provisional voting process, rather than seeking to undo the result of an election. Of course, as a practical reality, most litigation that actually occurs is likely to be motivated by a desire to affect the outcome of an election, rather than the altruistic, public-spirited motive of improving the accuracy of the process. For this reason, in the future, it will be useful for states to distinguish between (a) streamlined administrative remedial processes, which will enable individual voters to seek redress in the event they believe their provisional ballot rights were mistreated, and (b) a more burdensome judicial proceeding for the purpose of contesting an election result. In the meantime, in some states that have been the focus of widespread national attention because of past problems (for example, Florida and Ohio), citizen groups like the League of Women Voters may have sufficient resources and incentives to bring system-wide litigation that seeks structural reform of the provisional voting process.

Second, and related, the earlier that litigation occurs in the electoral process, the more likely it is to secure rights protected under provisional voting laws. If nothing else, early litigation (even when ruled unmeritorious) has the effect of clarifying the rules in advance. It can put people on notice of what rights they do and do not have. The EAC might be in a position to give guidance to states on how to encourage earlier, rather than later, litigation over provisional ballots. For example, EAC could consider whether it would be a "preferred practice" for states to preclude any post-election challenges that could have been filed in a pre-election lawsuit.

Third, the more narrow and specific the complaint (and thus the more narrow and specific the remedy sought by a lawsuit), the more receptive the court will be. It is easier for a court to order disclosure and the checking of additional records than it is for a court to sustain an amorphous Equal Protection claim about disparities in the signature verification process. Although it is too early to say that all Equal Protection challenges to the counting of provisional ballots will be unsuccessful, the speed with which the Washington Supreme Court rejected the Equal Protection claim over the signature matching process indicates that future Equal Protections claims will need to be much more specific about the disparities they allege in order to have a chance of success.

In sum, if litigation is to occur over provisional voting in 2006 or 2008, it would be better if the litigation were to occur as early as possible before Election Day, focused specifically on the ways state laws are allegedly deficient and should be remedied. Such litigation can have the virtue of clarifying the rules applicable to provisional voting and, where necessary, assuring that the rights protected by provisional voting laws are indeed enforced. Such pre-election lawsuits, of course, do not ask the court to change which candidate wins the election, and one lesson of the 2004 experience is that litigation is least valuable when it seeks that kind of outcome-altering decree.

Question 4: How effective was provisional voting in enfranchising qualified voters?

Answering this question poses a considerable challenge. To evaluate the decisions of local election officials' decisions on how to inform voters about the possibility of provisional voting and then whether to count a provisional ballot demands information about the eligibility or registration status of each provisional voter. That information is not available.

What is known, with reasonable confidence, is the number of provisional ballots cast and provisional ballots counted. Nationwide, 1,933,863 provisional ballots were cast, 1.6% of the total turnout. Of those ballots, 63.7% were subsequently verified and included in the final vote tally. Provisional ballots enfranchised 1,231,429 citizens, or 1.01% of the total turnout in 2004. These ballots were cast by voters who otherwise would have been turned away at the polls.

Not knowing the total number of registered voters who might have voted but could not makes estimating the effectiveness of provisional voting quantitatively impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes are lost in presidential elections due to the causes shown in the table below. The estimate is a rough approximation, but it may provide data good enough for at least a rough assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

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

Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting. Thus a rough-and-ready estimate of the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A very rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

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* Another interpretation of the data should be considered as well. The category of "registration mix-ups" was developed as a measure of the states' registration systems as included in the Census Bureau's Current Population Survey. The CPS after each election asks people if they were registered and if they voted. It gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000. Thus the arrival of provisional voting in the 18 "News" increased the number voting by only 0.1%.

Several states came to just that conclusion. Legislative activity is evidence that states were less than satisfied with the effectiveness of their processes. State legislation adopted since the election points to areas of concern.

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

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

Another indication of lack of effectiveness is legal challenges to the process. Voters or other parties have sought court review of local officials' decisions, and those are described in the answer to Question 3.

Aggregate data from the states indicates that some states were more effective than others in enfranchising voters through the provisional ballot. In states that used a provisional ballot before HAVA ("old" states), a higher proportion of voters were enfranchised by provisional ballots than in "new" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

A reasonable assumption is that potential voters in both the old states and new states encountered similar problems that made it impossible to cast a regular ballot. But they had different provisional systems to navigate, and consequently they experienced different outcomes. Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the new states. This provides more evidence that there is room for improvement.

If experience with provisional voting does turn out to be the key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further guidance from the EAC on best practices and more consistent management could sharpen the lessons learned from that experience.

But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic. The other possibility is that the "new" states have a political culture different from the "old" states. That is, underlying characteristics of the "new" states political system may be the reason they had not adopted some form of provisional voting as the "old" states did.

The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, re-registering after changing address. Or they may value keeping control at the local level, rather than ceding some authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballot will he harder and take longer to achieve.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

HAVA gave states broad latitude in how to implement provisional voting, including who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Little consistency existed among and within states in the way provisional ballots were used in 2004.

The use of provisional ballots was not distributed evenly across the country. Indeed, 6 states (California, New York, Ohio, Arizona, Washington, and North Carolina) accounted for more than two-thirds of all the provisional ballots cast in the 2004 election. Wide variation was found across the nation, even when overall state size and turnout was taken into account.

- In Alaska, provisional votes accounted for 7% of all votes cast on Election Day. In 22 other states provisional ballots made up less than 0.5% of votes on Election Day.
- The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware.
- The range of ultimate inclusion of provisional ballots in final vote tallies was immense: The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.

The greatest source of this variation was the state's experience or lack of experience with provisional voting. In experienced states, a higher proportion of voters cast provisional ballots and a higher percentage of provisional ballots was counted than in "new" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

- The 25 experienced states averaged about 2% (2.17%) of the total vote cast as provisional ballots. This was 4 times the rate as in states new to provisional, which averaged less than half a percent (0.47%).
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion of the new states, which counted just 33%, of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states provisional ballots accounted for only 0.23% of the total vote.
- In short, the share of provisional ballots in the total vote was six times greater in experienced states than in new states.

Other influences on the variation among the states included:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted.
- In the 4 states that simply matched signatures nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.

  - In the 14 States that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were certified
  - In the 14 states that required an affidavit just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted.
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were certified. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.

- Voter registration databases provided information that reduced the number of provisional ballots counted. In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%).

- States that allowed out-of-precinct ballots counted 56% of the provisional ballots. States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

  - In experienced states, this was even more pronounced. 52% of ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

High-Low rating of Percent of PV Ballots Cast as part of Turnout

Count

		High-Low rating of Percent of PV Ballots Cast that were Counted		
		Less than 50% Counted	More than 50% Counted	Total
High-Low rating of Percent of PV Ballots Cast as part of Turnout	Less than 1% of Total Turnout was PV	21	5	26
	More than 1% of Total Turnout was PV	1	16	17[*]
Total		22	21	43

As the table above shows, the nation can be divided into two groups of states: those that made significant use of provisional ballots (more than 1% of total turnout was cast as provisional ballots) and those that did not. The difference in how these two groups evaluated those ballots

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[*] These states are: Alaska, Arizona, California, Colorado, District of Columbia, Iowa, Kansas, New York, Washington, Utah, Ohio, North Carolina, Nebraska, Maryland, New Mexico, New Jersey, and West Virginia.

that were cast was striking. In states where high levels of provisional ballots were cast, high levels were also counted. In states where low levels of provisional ballots were cast, low levels were typically counted.

The table shows the relationship between use of provisional ballots in the states and the determination by the state that a provisional ballot should be counted. The relationship is strong (Yule's Q = 0.97), clear, and significant. In 26 states less than 1% of voters cast a provisional ballot. In 21 of those states, less than half the ballots cast were counted. In 17 states, more than 1% of voters case a provisional ballot, and in 16 of those states more than half the ballots were counted.

No ready conclusions can be drawn about why these results occur. The data could suggest that states where high levels of ballots were cast were overwhelmed by the sheer volume of them, resulting in insufficient critique of each ballot, or conversely that they were simply more experienced in making evaluations and were better able to identify legitimate ballots. It is possible that states with few ballots cast did not invest the time and effort to properly evaluate them, because their were so few of them, or it is possible that they were better able to dedicate the time to such an investigation and properly weeded out invalid ballots. Further research is required to better ascertain the reasons for these disparities.

Variation within states

Even within states consistency was hard to find. Counties differed widely in the rate at which ballots were cast and counted, suggesting that other factors beyond statewide regulations or administrative requirements were at play. This was true in both new and old states.

Election Line, for example, found that:

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

Of the 20 States for which we have gathered county-level provisional ballot data, the rate of counting these ballots frequently varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.

Election Official's Perceptions

In addition to the statistical differences among states' handling of provisional voting, there were also differences in how election officials prepared for and evaluated the use of provisional ballots. The survey conducted by the Eagleton Institute at Rutgers University found that county election officials reported different perceptions of provisional balloting, depending upon whether they came from "old" or "new" States. Both groups reported gaining help from state election offices on how to implement provisional balloting, but in different ways.

- Officials from "new" states reported receiving more guidance on how to evaluate ballots once cast, while officials from "old" states reported receiving more guidance on how to design ballots. Both groups regarded the guidance they received as being helpful.
- Officials from "old" states were more likely to report that they counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.
- Officials from "new" states were more likely to report that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted and that more time was needed to implement provisional voting procedures.
- Officials from "old" states were more likely to report that provisional voting sped up and improved polling place operations and that it helped officials to maintain more accurate registration databases.
- Officials from "new" states were more likely to agree that provisional voting created unnecessary problems for election officials and poll workers.

This data can be interpreted either of two ways. First, experience and familiarity with provisional voting may be the key factor in the degree to which provisional voting is used and in how election officials perceived provisional balloting. Those officials who were more familiar and experienced with the system had more positive reactions to provisional voting and its worth. Eight out of ten officials from experienced states reported that "there is a need to offer voters the opportunity to cast provisional ballots", while only 6 out of 10 from new states did so.

But another way of explaining the difference is less rosy for provisional ballots. It may be that the states new to provisional balloting have a political culture somewhat different from the states that had offered a provisional ballot before HAVA. The new states may have a history of striking a different balance among the competing voting objectives of access, security, and administrative practicality. Officials in those states may believe that the fail safe offered by provisional voting broadens access at the expense of security and burdens election administrators beyond any perceived benefit. Further survey research could help resolve this question.

Conclusion

States that previously had some form of provisional ballots and those that did not had different experiences in 2004. Those states that had used a provisional ballot before HAVA had more ballots cast, found higher levels of those ballots to be legitimate, and had much higher levels of provisional ballots in their final vote tallies. Election officials in those states also felt that provisional ballots were easier to administer and more worthwhile than did their counterparts in states new to provisional voting. The strongest influence noted in this study was simply that of experience with the process.

If the difference is mostly one of experience, in subsequent elections, officials will be more prepared for and comfortable with the implementation of provisional ballots. This should lead to greater consistency among the states and more positive ratings of it as a system. If, on the other hand, the different experiences with provisional ballots reflect different political cultures among the states, consistency among the states will prove more difficult to achieve.

Other factors, such as verification laws and requirements for whether out-of-precinct ballots may be counted, will continue to cause variance across the country. But as voters and election officials become more familiar with the system, that variance may stabilize. In sum, provisional balloting was applied inconsistently in 2004, returning a wide range of results. Since the states have considerable latitude in how they meet HAVA's requirements for provisional voting, a considerable degree of variation among the states is to be expected in the future. If that variation stems from differences in political culture among the states, it is likely to persist.

Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

This question demands two different kinds of answers. First, how do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process? Second, objectively how well did the process appear to be managed?

While essentially all (98%) county-level local elections officials considered the instructions they received from their state governments to be "useful" or "very useful," the crucial question is how well did the process work on Election Day? The lack of consistency among and within states in the use of provisional ballots and evaluating those ballots indicates considerable variation in the understanding of the process by election officials.

Four out of ten local election officials felt poll workers needed more training to understand their responsibilities. One sign of dissatisfaction with the functioning of the provisional voting process is the number of states that have amended their statutes on provisional voting to include specific language about poll worker training. Among these states are Colorado, Indiana, New Mexico and Washington.

Statutes, of course, reflect only part of the story. For example, Alabama – a state new to provisional voting – undertook a concerted training effort on how to handle and count provisional ballots. It also created a notification system whereby voters could verify if their vote counted within 10 days of casting their ballots. These steps were not dictated by statute, but reflected the initiative of f local elections officials. Their leadership indicates a good understanding of their responsibilities under HAVA and the state statute.

More than 8 out of 10 county-level elections officials reported receiving instructions from their state government regarding the implementation of provisional voting. Topics covered in those instructions from the states included:

- How to administer the provisional voting system
- Who is eligible to vote using a provisional ballot
- How individuals vote using a provisional ballot
- The jurisdiction where individuals can vote by provisional ballot
- Whether the provisional ballot could be used as an application to update the voter's registration
- How to train poll workers to process provisional ballots
- How to provide voters with the opportunity to verify if their provisional ballot was counted
- Guidelines for determining which provisional ballots are to be counted
- Strategies to reduce the need for voters to use provisional ballots
- How to design the structure of the provisional ballot

Those local election officials believe the most effective efforts to improve the provisional voting process would be to reduce the use of provisional ballots as a failsafe by improving technology –

such as registration databases – available to voters and poll workers. Reflecting their understanding of the provisional voting process, local elections officials call for:

- State-sponsored websites where voters can verify their registration status before Election Day.
- Access by poll-workers to statewide voter registration databases at polling place.

While local election officials report that the instructions they received were "useful," the quality of the information they receive is not the only influence on their performance. They recognize that timing is critically important. They understand that they must receive clear instructions from their state election agencies early enough to absorb, understand, and pass it along as operational instructions to poll workers and voters.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:40 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: EAC Briefing Materials - Tues. 9/6

Karen Lynn-Dyson
Research Manager
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:34 AM -----

"Lauren Vincelli"
[redacted]
09/01/2005 06:20 PM
Please respond to
[redacted]

To [redacted]
cc "'Tom O'neill'" [redacted]
Subject EAC Briefing Materials - Tues. 9/6

Hi Karen,

Attached please find a summary of answers to the questions guiding our Provisional Voting analysis in preparation for our meeting with the EAC on Tuesday, Sept. 9th. Please distribute this document in advance of the briefing to your colleagues who will be attending. There are several appendix documents that have been fedex'ed to you for delivery by tomorrow at noon. These documents form a large part of our original research, and are referred to in our summary responses to the 6 guiding questions. I am sending 3 copies of the appendix documents for you and your colleagues. Additionally, Mr. O'Neill will be bringing you a CD-rom with all of the enclosure documents for your convenience.

If you have any questions, please do not hesitate to call or email me. Enjoy the holiday weekend.

Best,
Lauren Vincelli

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EAGLETON INSTITUTE OF POLITICS

BREIFING FOR THE EAC

PRELIMINARY FINDINGS ON PROVISIONAL VOTING

September 1, 2005

Prepared by:
Eagleton Institute of Politics at Rutgers, The State University of New Jersey
Moritz College of Law at the Ohio State University

MEMORANDUM

TO: Commissioners and Staff of the EAC

FROM: Tom O'Neill, Eagleton Institute of Politics

DATE: September 6, 2005

RE: Briefing on Provisional Voting Research

The enclosed draft synthesizes our findings to date based on the research on provisional voting completed since the start of the project. It is organized as summary answers to the six key questions on topics of particular interest enumerated in the contract.

1) How did states prepare for the HAVA Provisional Voting requirement?
2) How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
3) How did litigation affect the implementation of Provisional Voting?
4) How effective was Provisional Voting in enfranchising qualified voters?
5) Did states and local processes provide for consistent counting of Provisional Ballots?
6) Did local election officials have a clear understanding of how to implement Provisional Voting?

Our discussion on the 6th will revolve around these draft, summary answers. Your comments and reactions to the material will provide direction a basis for us to complete work on the final report and the preliminary guidance document. We seek the EAC's response and comments to ensure that the research is meeting the needs of Commissioners and staff.

We will also ask for the comments of the Peer Review Group on this draft to provide independent analysis of our approach and methods.

The following materials are enclosed as background for the presentation:

Summary responses to 6 Key Questions regarding Provisional Voting

Appendices:
- a) Statistical Review of Provisional Voting in the 2004 Election
- b) State Narratives on Provisional Voting
- c) Memorandum: Provisional Voting Litigation by Issue
- d) Memorandum: Provisional Voting Litigation by State
- e) Memorandum: Provisional Voting Litigation

Question 1: How did states prepare for HAVA provisional voting requirements?

HAVA required all states to develop a process for permitting individuals who state they are registered, eligible to vote and in the proper jurisdiction for voting but are not on the official registration list to do so by provisional ballot. It also directed states to provide a way for provisional voters to find out if their ballots were counted.

For the 25 states that had some form of provisional ballots before HAVA, meeting the requirements meant reviewing and revising, if necessary, their process for provisional voting. The 18 states that were new to provisional voting had to provide for provisional ballots by a new statute or administrative regulation and had to design procedures for pre-election, election day and post-election day activity. Preparation at the state level is described exhaustively in the collection of state statutes and regulations compiled in this research.

In addition to devising the provisional voting process, states had the responsibility to define "jurisdiction," adopt rules regarding the use of voter identification, and prepare a system to decide which provisional ballots cast should be counted. The states also had the responsibility of providing training or instruction for local election officials who would actually manage the provisional voting process and the local and intermediary level of government. Interviews with local election officials, at the county level in most states, provided information to assess how they prepared to administer the process.

Most, but not all, (84 percent) county-level election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states:

- Almost all officials received instruction from their state government on how to determine a voter's eligibility to receive a provisional ballot and felt the instructions provided were useful.
- Nine out of ten received instruction for providing voters the opportunity to verify if the provisional ballot was counted as well as instruction for establishing guidelines for counting provisional ballots.
- Two out of three received information on using a provisional ballot as an application to update the voter's registration.
- Only about half of local election officials received instruction on strategies to reduce the need for voters to use provisional ballots.

Although almost all county-level election officials provided training or written instruction to precinct-level poll workers on how to administer provisional ballots, wide disparities existed in other areas of instructions or resources.

- Nine out of ten provided a telephone line for poll workers to speak to an election official with access to a list of eligible voters to determine voters' assigned precinct and polling place.
- Eight in ten furnished local poll workers with access to a list of eligible voters in the

jurisdiction.

- Only about 1 in 10 (12 percent) made available to poll workers a statewide voter registration database.
- Almost equally rare (14%) was training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in how the county-level officials prepared to comply with HAVA's requirement of providing that voters have a way to find out if their provisional ballots counted:

- Seven in ten of those officials provided the main telephone number for the local or county election office;
- About half (47 percent) used mail notification;
- Four in ten provided a dedicated toll-free telephone hotline;
- About 1 in 5 (22%) offered this information through a website, and about half that number offered email notification.

Question 2: How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?

In the 2004 election, 18 states were new to the process of provisional voting, while 25 others had experience with similar methods of "fail-safe voting." Local election officials in the "Old" states felt more confident in their ability to administer the provisional voting process:

- Almost three-quarters (74%) of local election officials in the "Old" states found implementing the provisional voting system was "easy," but that was true of just over half (56%) of officials in the "New" states.
- About half (49%) of officials in the "New" states felt that more training was needed on how to administer the provisional voting system. Less than 40% of officials in the "Old" states felt that way.
- Nine out of ten local officials in the "Old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "New" states.

In some functions there was little difference in the preparation for provisional voting by "Old" and "New" states. For example, in both subgroups, about half (54%) of county-level officials received from their state governments little information about "strategies to reduce the need for voters to use provisional ballots." But for other functions, training varied widely in the type and amount between the two types of states:

- More officials in "Old" states (7 in 10) than "New" (6 in 10) received state instruction on the design of the provisional ballot.
- By a similar margin, more "Old" state officials received instruction about using the provisional ballot as an application to update the voter's registration.

The "New" state officials believed that voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted, and they felt that more funding was needed to educate voters about their rights to cast a provisional ballot:

- Four out of ten officials in the "New" states, compared with 3 out of 10 in the "Old" stated that more information should have been provided to voters about the jurisdiction in which the ballot had to be cast.
- Also, four out of ten in the "New" states felt that more time was needed compared with just over a quarter (26%) of those in "Old" states.

When we move from preparation to performance, the importance of experience becomes sharply clear. In the "Old" states, provisional ballots represented over 2% (2.11%) of the total vote. In the "New" states, that number was less than one-fourth of that, 0.47%. How the ballots were then evaluated also showed significant differences between "Old" and "New." In ruling ballots legitimate and including them in the final vote, the "Old" states averaged nearly double the number of the "New" states, 58% to 32%. In "Old" states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the "New" states.

Question 3: How did litigation affect the implementation of Provisional Voting?

SUMMARY: Litigation just before the 2004 election upheld the principle that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes. This pre-election litigation also clarified that HAVA does not require states to count provisional votes cast in the wrong precinct. Otherwise, however, this pre-litigation occurred too late to significantly shape the way the states implemented provisional voting.

Lawsuits filed shortly after Election Day, which were designed to alter the outcome of a close election, were uniformly unsuccessful in this goal, although some of them had the ancillary effect of requiring the counting of some provisional ballots that would have been left uncounted. Thus, the experience of the 2004 election shows that litigation can be useful, not to change the outcome of a race, but to enhance the accuracy of the provisional voting process. This kind of accuracy-enhancing litigation is most beneficial the earlier it occurs in the process, and the nation can anticipate more of it in advance of the 2006 and 2008 elections if states leave unaddressed some of the ambiguities and problems that surfaced in the 2004 election.

Although the enactment of HAVA in 2002 and its erratic implementation in the states during the ensuing two years provided ample opportunity for litigation designed to clarify its requirements concerning provisional voting, or otherwise challenge state laws and administrative procedures regarding provisional voting, such litigation did not develop until the eve of the November 2004 general election. By then, it was largely too late for litigation to affect the rules and procedures in place in advance of Election Day.

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

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

To a lesser extent there was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining whether these provisional voters already have voted an absentee ballot (in which case one would need to be ruled ineligible, in order to avoid double voting). But these decisions confirm the basic premise that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

After Election Day, there was litigation over provisional ballots in states where the outcome of specific races might turn on whether or not some of the provisional ballots cast were ruled eligible for counting. Moreover, the "placeholder" filing of similar lawsuits in Ohio – in anticipation that provisional ballots might have made a difference in the presidential election in that state – indicates that there would have been more litigation of this type had that race (or others) been closer. Although these placeholder lawsuits fizzled away once it was clear that provisional ballots in Ohio would not affect the result of the presidential election, the litigable issues remain capable of resurrection when they might make a difference in the future. Indeed, the League of Women Voters has already filed a major new lawsuit in Ohio, seeking proactive changes in the provisional voting system in advance of the next election in that state. (This effort to resolve these legal issues well before November 2006 is a salutary one, so that the judiciary does not struggle with complicated, sensitive questions at a frenzied pace, either in the last few weeks before Election Day or the first few weeks immediately after Election Day.)

The efficacy of these post-Election Day lawsuits was mixed. In New York, supporters of a Democratic candidate for a state senate seat prevailed in that state's highest court on the proposition that provisional ballots cast at the correct polling *site* but at the wrong precinct should be counted. (Many polling sites, particularly in urban locations, serve multiple precincts.) The New York high court, however, rejected the contention that provisional ballots at the wrong polling site must be counted. The court also rejected the proposition that a provisional ballot should count if another (regular) vote already had been cast in the name of the provisional voter (even if the provisional voter purported to offer proof that the other vote had been cast by an imposter). Finally, the court accepted the contention that a provisional ballot should count if the ballot's envelope was missing information as a result of a poll worker's clerical error. The upshot of these rulings was that the Democratic candidate reduced the Republican's margin of victory (from 58 to a mere 18 votes), but did not succeed in overturning the election result.

In North Carolina, post-election litigation over provisional ballots ultimately proved inconsequential as the state's legislature took matters into its own hands. The race for the state's Superintendent of Public Instruction turned on whether approximately 11,000 "wrong precinct" provisional ballots would be counted under state law. The state's Supreme Court ruled that they should not count, but the state's legislature disagreed and enacted a new law to supersede the supreme court's ruling. The election was finally resolved on August 23, 2005 – *43 weeks* after Election Day – making it the last settled statewide election from 2004. The length of time it took to resolve this dispute shows the dangers of leaving ambiguous provisions of state law concerning the counting of provisional ballots.

Washington suffered an even more celebrated, if slightly less protracted, dispute over the counting of provisional ballots in statewide race. Here, too, the effort to overturn the result of the race through a lawsuit was unsuccessful. Republicans went to court after their gubernatorial candidate, Dino Rossi, came up 129 votes short in the third (manual) count of the ballots (having come out ahead in the two previous – machine – counts). Among other problems, Republicans were able to show that this third count included 252 provisional ballots cast by individuals who could not be verified as registered voters. But because these provisional ballots had been mingled with regular ballots during the counting process, it no longer could be determined for which candidate these provisional ballots were cast. After a lengthy trial at which the Republicans attempted to show statistically that enough of these ineligible ballots would have been cast for the Democratic candidate to change the result of the election, the trial court rejected such statistical proof as improper under state law, and Rossi decided not to appeal the decision to state's supreme court. The ruling came on June 6, 2005 – 32 weeks after Election Day.

Perhaps Washington's plight was aberrational and uncontrollable: how were election officials supposed to predict – and, more important, how were they supposed to avoid – the problem of poll workers inappropriately feeding provisional ballots through the counting machines as if they were regular ballots? (For future elections, Washington has adopted a series of measure, including color-coding provisional ballots and making sure that their different shape and size prevents them from being read by the machines used to count regular ballots, in an effort to prevent a repeat of this particular problem.) The after-the-fact litigation certainly was unable to put the spilled milk back in the bottle. While the litigation put a spotlight on the failures of the electoral process in Washington in 2004, serving as a catalyst for future reforms, it did nothing to change the outcome of the 2004 election itself, except only to delay the conclusion of the process by more than six months. (The fact that the Democratic candidate, Christine Gregoire, who was certified the winner after the manual recount, was inaugurated as Governor and exercised the powers of the office during those six months evidently affected the willingness of a trial judge to overturn the results of the election.)

One earlier aspect of the litigation over provisional ballots in Washington did prove efficacious – and importantly so. In December 2004, during the recounting process (before certification of Gregoire as winner), it was discovered that 547 provisional ballots in King County has been rejected because they could not be matched with a signature in the county's current electronic database of registered voters, but that county officials had not attempted to match the signatures against original registration forms, older electronic files, or other available records. Upon this discovery, Democrats went to court arguing that state law required that the provisional ballots be verified against these additional records. The Washington Supreme Court unanimously agreed with this argument, vindicating the principle that provisional ballots are designed to protect voters against clerical errors affecting the accuracy of the state's updated registration list.

The state supreme court, however, rejected the Democrats' additional argument that different rates at which counties invalidated provisional ballots because the signature on the ballot did not match the signature on file was sufficient to establish an Equal Protection violation under the principles of *Bush v. Gore*. The different rates could be explained by factors other than the assumption that county officials were applying different standards when conducting signature matches. Since the counties were purporting to apply the same standard, and there was no definitive proof to the contrary, the court found no Equal Protection violation.

The Democrats did win another important procedural ruling early on in the post-election litigation in Washington. They sought – and obtained – public disclosure of the names of all individuals whose provisional ballots were rejected because their signatures did not match county records. This disclosure ultimately uncovered which provisional ballots had been rejected based on insufficient examination of county records.

CONCLUSIONS:

A review of all the litigation over provisional voting in connection with the 2004 election leads to the following tentative conclusions. First and foremost, litigation is more likely to be successful – and yield a public benefit – if its goal is simply to assure the accuracy of the provisional voting process, rather than seeking to undo the result of an election. Of course, as a practical reality, most litigation that actually occurs is likely to be motivated by a desire to affect the outcome of an election, rather than the altruistic, public-spirited motive of improving the accuracy of the process. For this reason, in the future, it will be useful for states to distinguish between (a) streamlined administrative remedial processes, which will enable individual voters to seek redress in the event they believe their provisional ballot rights were mistreated, and (b) a more burdensome judicial proceeding for the purpose of contesting an election result. In the meantime, in some states that have been the focus of widespread national attention because of past problems (for example, Florida and Ohio), citizen groups like the League of Women Voters may have sufficient resources and incentives to bring system-wide litigation that seeks structural reform of the provisional voting process.

Second, and related, the earlier that litigation occurs in the electoral process, the more likely it is to secure rights protected under provisional voting laws. If nothing else, early litigation (even when ruled unmeritorious) has the effect of clarifying the rules in advance. It can put people on notice of what rights they do and do not have. The EAC might be in a position to give guidance to states on how to encourage earlier, rather than later, litigation over provisional ballots. For example, EAC could consider whether it would be a "preferred practice" for states to preclude any post-election challenges that could have been filed in a pre-election lawsuit. [Tom: I'm not sure whether to include these last two sentences, but they are responsive to your question.]

Third, the more narrow and specific the complaint (and thus the more narrow and specific the remedy sought by a lawsuit), the more receptive the court will be. It is easier for a court to order disclosure and the checking of additional records than it is for a court to sustain an amorphous Equal Protection claim about disparities in the signature verification process. Although it is too early to say that all Equal Protection challenges to the counting of provisional ballots will be unsuccessful, the speed with which the Washington Supreme Court rejected the Equal Protection claim over the signature matching process indicates that future Equal Protections claims will need to be much more specific about the disparities they allege in order to have a chance of success.

In sum, if litigation is to occur over provisional voting in 2006 or 2008, it would be better if the litigation were to occur as early as possible before Election Day, focused specifically on the ways state laws are allegedly deficient and should be remedied. Such litigation can have the virtue of clarifying the rules applicable to provisional voting and, where necessary, assuring that the rights protected by provisional voting laws are indeed enforced. Such pre-election lawsuits, of course, do not ask the court to change which candidate wins the election, and one lesson of the 2004 experience is that litigation is least valuable when it seeks that kind of outcome-altering decree.

Question 4: How effective was provisional voting in enfranchising qualified voters?

Providing an answer to this question poses a considerable challenge. To evaluate the decisions of local election officials' decisions on how to inform voters about the possibility of provisional voting and then whether to count a provisional ballot demands information about the eligibility or registration status of each provisional voter. That information is not available.

What is known, with reasonable confidence, is the number of provisional ballots cast and provisional ballots counted. Provisional ballots enfranchised 1,231,429 citizens, or 1.01% of the total turnout in 2004. Nationwide, 1,933,863 provisional ballots were cast, 1.6% of the total turnout. Of those ballots, 63.7% were subsequently verified and included in the final vote tally. These ballots were cast by voters who otherwise would have been turned away at the polls.

Not knowing the total number of registered voters who might have voted but could not makes estimating the effectiveness of provisional voting quantitatively impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes are lost in presidential elections due to the causes shown in the table below. The estimate is a rough approximation, but may provide data that begins to assess the order of magnitude of the pool of potential voters who might have been helped by the provisional ballot process.

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

Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting. Thus a rough-and-ready estimate of the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A very rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)[*]. Whatever the precise figure, concluding that

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[*] Since this tentative conclusion is based on imprecise estimates, caution suggests another interpretation of the data be considered as well. The category of "registration mix-ups" was developed as a measure of the states' registration systems as included in the Census Bureau's Current Population Survey. The CPS after each asks people if they were registered and if they voted. It gives breakdowns of reasons why people did not vote.

Survey respondents tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states.

In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000. Thus the arrival of provisional voting in the 18 "News" increased the number voting by only 0.1%. We prefer the conclusion in the text, but this alternate interpretation may well be correct.

there is considerable room for improvement seems reasonable.

Several states came to just that conclusion. Legislative activity suggests that the states were less than satisfied with the effectiveness of their processes. State legislation adopted since the election points to areas of concern.

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

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

Another indication of lack of effectiveness is legal challenges to the process. Voters or other parties have sought court review of local officials' decisions.

- In Washington State a long legal battle over the gubernatorial election resulted in calls for reform in the way provisional ballots are evaluated. But much of the furor was over provisional ballots that possibly should not have been counted rather than over ballots that were rejected in error.

- In North Carolina's much-disputed election for Superintendent of Public Instruction, the most contentious debate concerning provisional ballots hinged on the issue of ballots cast outside the correct precinct rather than the qualifications of the voter to cast the ballot.

In general, the courts have been clear that a voter's ballot should not be rejected when the invalidity was caused by a ministerial error by election officials. In New York, the court place upon election officials a duty to direct voters to the correct district once they are inside the correct polling place, but the voter has the obligation to arrive at the correct polling place.

The courts have also held that states cannot categorically deny provisional ballots to voters, a holding that broadens the concept of provisional voting beyond the fail-safe concept. Unfortunately, these decisions could operate to <u>decrease</u> the chance that a ballot will actually be counted. Even if a precinct worker determines that a potential voter is seeking to vote in the wrong precinct, the voter cannot be denied a provisional ballot and simply directed to the correct polling place. If the voter demands a provisional ballot, it must be provided, even if it will not be counted if cast in the wrong precinct. Clearer instructions to poll worker and voters could ameliorate the unintended consequences of these court decisions.

Ultimately, second-guessing the determinations of election officials on counting ballots is likely to be fruitless outside of a court hearing on particular ballots and specific decisions. Aggregate data from the states, however, indicates that some states were more effective than others in enfranchising voters through the provisional ballot.

In states that used a provisional ballot before HAVA ("Old" states), a higher proportion of voters were enfranchised by provisional ballots than in "New" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

A reasonable assumption is that potential voters in both the old states and new states encountered similar problems that made it impossible to cast a regular ballot. But they had different provisional systems to navigate, and consequently they experienced different outcomes. Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the new states. This provides more evidence that there is considerable room for improvement.

If experience with provisional voting does turn out to be the key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further guidance from the EAC on best practices and more consistent management could sharpen the lessons learned from that experience.

But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "New" states was the result of administrative problems stemming from inexperience will improvement be automatic. The other possibility is that the "New" states have a political culture different from the "Old" states. That is, underlying characteristics of the "New" states political system may be the reason they had not adopted some form of provisional voting as the "Old" states did.

The "New" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, re-registering after changing address. Or they may value keeping control at the local level, rather than ceding some authority to state or federal directives. If the inconsistent performance in the "New" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballot will he harder and take longer to achieve.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

HAVA was designed to provide registered voters who found themselves absent from the voters' list at polling places a way to exercise their right to vote. It requires that certain voters be given provisional ballots and that those ballots be counted if they are later determined eligible under state law. The act gave states broad latitude in how to implement provisional voting, including who beyond the required categories of voters should receive provisional ballots and how to determine if provisional ballots that are cast should be counted.

There was considerable variation in how provisional ballots were distributed and counted in the 2004 election. Little consistency existed among <u>and</u> within states in the way provisional ballots were used.

The use of provisional ballots was not distributed evenly across the country. Indeed, 6 states (California, New York, Ohio, Arizona, Washington, and North Carolina) accounted for more than two-thirds of all the provisional ballots cast in the 2004 election. Wide variation was found across the nation, even when overall state size and turnout was taken into account.

- In Alaska, provisional votes accounted for 7% of all votes cast on Election Day. In 22 other states provisional ballots made up less than 0.5% of votes on Election Day.
- The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware.
- The range of ultimate inclusion of provisional ballots in final vote tallies was immense: The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.

The greatest source of this variation was the state's experience or lack of experience with provisional voting. In experienced states, a higher proportion of voters cast provisional ballots and a higher percentage of provisional ballots were counted than in states implementing provisional voting for the first time.

In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

- The 25 experienced states averaged about 2% (2.17%) of the total vote cast as provisional ballots. This was 4 times the rate as in states new to provisional, which averaged less than half a percent (0.47%).
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion of the new states, which counted just 33% of cast provisional ballots.

- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states provisional ballots accounted for only 0.23% of the total vote.
- In short, the share of provisional ballots in the total vote was six times greater in experienced states than in new states.

Other influences on the variation among the states included:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted.
    - In the 4 states that simply matched signatures nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
    - In the 14 States that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were certified
    - In the 14 states that required an affidavit just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted.
    - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were certified. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.

- Voter registration databases provided information that reduced the number of provisional ballots counted. In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%).

- States that allowed out-of-precinct ballots counted 56% of the provisional ballots. States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.
    - In experienced states, this was even more pronounced. 52% of ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
    - If all states counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

A final word about the variation among the states:

High-Low rating of Percent of PV Ballots Cast as part of Turnout
* High-Low rating of Percent of PV Ballots Cast that were Counted Cross-tabulation

Count

		High-Low rating of Percent of PV Ballots Cast that were Counted		
		Less than 50% Counted	More than 50% Counted	Total
High-Low rating of Percent of PV Ballots Cast as part of Turnout	Less than 1% of Total Turnout was PV	21	5	26
	More than 1% of Total Turnout was PV	1	16	17[*]
Total		22	21	43

As the table above shows, the nation can be divided into two groups of states: those that made significant use of provisional ballots (more than 1% of total turnout was cast as provisional ballots) and those that did not. The difference in how these two groups evaluated those ballots that were cast was striking. In states where high levels of provisional ballots were cast, high levels were also counted. In states where low levels of provisional ballots were cast, low levels were typically counted.

The table shows the relationship between use of provisional ballots in the states and the determination by the state that a provisional ballot should be counted. The relationship is strong (Yule's Q = 0.97), clear, and significant. In 26 states less than 1% of voters cast a provisional ballot. In 21 of those states, less than half the ballots cast were counted. In 17 states, more than 1% of voters case a provisional ballot, and in 16 of those states more than half the ballots were counted.

No ready conclusions can be drawn about why these results occur. The data could suggest that states where high levels of ballots were cast were overwhelmed by the sheer volume of them, resulting in insufficient critique of each ballot, or conversely that they were simply more experienced in making evaluations and were better able to identify legitimate ballots. It is possible that states with few ballots cast did not invest the time and effort to properly evaluate them, because their were so few of them, or it is possible that they were better able to dedicate the time to such an investigation and properly weeded out invalid ballots. Further research is required to better ascertain the reasons for these disparities.

Variation within states

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[*] These states are: Alaska, Arizona, California, Colorado, District of Columbia, Iowa, Kansas, New York, Washington, Utah, Ohio, North Carolina, Nebraska, Maryland, New Mexico, New Jersey, and West Virginia.

Even within states consistency was hard to find. Counties differed widely in the rate at which ballots were cast and counted, suggesting that other factors beyond statewide regulations or administrative requirements were at play. This was true in both new and old states.

Election Line, for example, found that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Of the 20 States for which we have gathered county-level provisional ballot data, the rate of counting these ballots frequently varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also impact the use of provisional ballots.

Election Official's Perceptions

In addition to the statistical differences among how states handled provisional voting, there were also differences in how election officials prepared for and evaluated the use of provisional ballots. A survey conducted by the Eagleton Institute at Rutgers University found that county election officials reported different perceptions of provisional balloting, depending upon whether they came from "Old" or "New" States. Both groups reported gaining help from state election offices on how to implement provisional balloting, but in different ways.

- Officials from "new" states reported receiving more guidance on how to evaluate ballots once cast, while officials from "old" states reported receiving more guidance on how to design ballots. Both groups regarded the guidance they received as being helpful.
- Officials from "old" states were more likely to report that they counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.
- Officials from "new" states were more likely to report that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted and that more time was needed to implement provisional voting procedures.
- Officials from "old" states were more likely to report that provisional voting sped up and improved polling place operations and that it helped officials to maintain more accurate registration databases.
- Officials from "new" states were more likely to agree that provisional voting created unnecessary problems for election officials and poll workers.

This data can be interpreted either of two ways. First, experience and familiarity with provisional voting may be the key factor in the degree to which provisional voting is used and in how election officials perceived provisional balloting. Those officials who were more familiar and experienced with the system had more positive reactions to provisional voting and its worth. 81% of officials from experienced states reported that "there is a need to offer voters the opportunity to cast provisional ballots", while only 62% from new states did so.

But another way of explaining the difference is less rosy for provisional ballots. It may be that the states new to provisional balloting have a political culture somewhat different from the states that had offered a provisional ballot before HAVA. The new states may have a history of striking a different balance among the competing voting objectives of access, security, and administrative practicality. Officials in those states may believe that the fail safe offered by provisional voting broadens access at the expense of security and burdens election administrators beyond any perceived benefit. Further survey research could help resolve this question.

Conclusion

States that had previously had some form of provisional ballots and those that did not had different experiences in 2004. Those states that had used a provisional ballot before HAVA states had more ballots cast, found higher levels of those ballots to be legitimate, and had much higher levels of provisional ballots in their final vote tallies. Election officials in those states also felt that provisional ballots were easier to administer and more worthwhile than did their counterparts in states new to provisional voting. The strongest influence noted in this study was simply that of experience with the process.

If the difference is mostly one of experience, in subsequent elections, officials will be more prepared for and comfortable with the implementation of provisional ballots. This should lead to greater consistency among the states and more positive ratings of it as a system. If, on the other hand, the different experiences with provisional ballots reflects different political cultures among the states, consistency among the states may take longer to increase.

Other factors, such as verification laws and requirements for whether out-of-precinct ballots may be counted, will continue to cause variance across the country, but as voters and election officials become more familiar with the system, that variance may stabilize. In sum, provisional balloting was applied inconsistently in 2004, returning a wide range of results. Since the states have considerable latitude in how they meet HAVA's requirements for provisional voting, a considerable degree of variation among the states is to be expected in the future. If that variation stems from differences in political culture among the states, it is likely to persist.

Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

This question demands two different kinds of answers. First, how do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process? Second, objectively how well did the process appear to be managed?

While essentially all (98%) county-level local elections officials considered the instructions they received from their state governments to be "useful" or "very useful," the crucial question is how well did the process work on election day? The lack of consistency among and within states in the use of provisional ballots and evaluating those ballots indicates considerable variation in the understanding of the process by election officials.

Four out of ten local election officials felt poll workers needed more training to understand their responsibilities. One sign of dissatisfaction with the functioning of the provisional voting process is the number of states that have amended their statutes on provisional voting to include specific language about poll worker training. Among these states are Colorado, Indiana, New Mexico and Washington.

Statutes, of course, reflect only part of the story. For example, Alabama – a state new to provisional voting – undertook a concerted training effort on how to handle and count provisional ballots. It also created a notification system whereby voters could verify if their vote counted within 10 days of casting their ballots. These steps were not dictated by statute, but reflected the initiative of f local elections officials. Their leadership indicates a good understanding of their responsibilities under HAVA and the state statute.

More than 8 out of 10 county-level elections officials reported receiving instructions from their state government regarding the implementation of provisional voting. Topics covered in those instructions from the states included:

- How to administer the provisional voting system
- Who is eligible to vote using a provisional ballot
- How individuals vote using a provisional ballot
- The jurisdiction where individuals can vote by provisional ballot
- Whether the provisional ballot could be used as an application to update the voter's registration
- How to train poll workers to process provisional ballots
- How to provide voters with the opportunity to verify if their provisional ballot was counted
- Guidelines for determining which provisional ballots are to be counted
- Strategies to reduce the need for voters to use provisional ballots
- How to design the structure of the provisional ballot

Those local election officials believe the most effective efforts to improve the provisional voting process would be to reduce the use of provisional ballots as a failsafe by improving technology – such as registration databases – available to voters and poll workers. Reflecting their understanding of the provisional voting process, local elections officials call for:

- State-sponsored websites where voters can verify their registration status before Election Day.
- Access by poll-workers to statewide voter registration databases at polling place.

While local election officials report that the instructions they received were "useful," the quality of the information they receive is not the only influence on their performance. They recognize that timing is critically important. They understand that they must receive clear instructions from their state election agencies early enough to absorb, understand, and pass it along as operational instructions to poll workers and voters.

Karen Lynn-Dyson/EAC/GOV
04/27/2006 09:10 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: Schedule for completion of Prov. Voting and Voter ID research

I think that a number of months ago we envisioned the Eagleton project culminating with a presentation of both of the papers at a public meeting. We had tentatively scheduled that presentation for the June public meeting. Also, we must provide for a review of these studies to EAC's Standards Board and Board of Advisors.

Clearly, plans have changed although we need to figure out how we have Eagleton present its final papers on Provisional Voting (already planned)and Voter Identification (still in process) to the EAC Standards and Advisory Boards.

Look forward to your suggestions on how best to proceed with wrapping up these two efforts.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/25/2006 12:08 PM

To [redacted]
cc [redacted]
bcc [redacted]
Subject Re: Eagleton/Moritz Next Steps

John and Tom-

A couple of items related to timing over the next several weeks:

1. Is it possible to get your final report on Provisional Voting by COB May 5? If so, I can get this to the four Commissioners for final review and approval. It will then be ready to present to the EAC Board of Advisors and Standards Board at the May 24 meeting.

2. As we discussed I have been working to identify a small group of academics(three or so) who will be available to review the Voter ID paper the week of May 8. The focus of the review will be on Tim's research methodology and statistical analysis. I am fairly certain that this review can be done via conference call , preferably on May 11 or May 12. This would assume each of the reviewers will have spent time reviewing the paper, taking extensive notes and summarizing his or her comments. I expect that you all, Tim, Mike Alvarez and any others from your peer review panel, who have an expertise in research and statistics, will be available for the conference call, as well?

3. While I expect you will be able to have your final Voter ID paper to me sometime during the week of May 15, it is not clear whether or not the paper will be presented to the EAC Standards and Advisory Boards the following week. As you know, the paper contains some controversial information, so the Commissioners may elect to spend additional time reviewing the findings among themselves, and before it is formally presented to our Boards.

Let me know if this schedule works for you all.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/19/2006 02:18 PM

To [redacted]
cc Tamar Nedzar/EAC/GOV@EAC
bcc
Subject Re: No cost extension paperwork

Hi John-

As with the last no-cost extension request, I'll need a brief memo/statement outlining why you are making the request for the extension. Included in the narrative should be statement about which tasks have not been completed and why.

I'm pressing ahead with the timeline we discussed last week. I think a May 5 teleconference may be too ambitious- I think it may be more likely that we'll get peer review comments during the week of May 8.

Other than that I think it's doable.

Thanks, as always, for your work.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" [redacted]>

"John Weingart"
<[redacted]>
04/19/2006 11:48 AM
Please respond to
[redacted]

To [redacted]
cc
Subject Re: No cost extension paperwork

Ok. It would be very helpful to us to get that done before the end of April. When do you think you'll be able to get back to us about the schedule for completing the project we discussed last week?

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

[redacted]

\>
\> John-
\>
\> One of our law clerks, Tamar Nedzar, is working with me on the
\> paperwork for your no-cost extension.
\>

> She will be in touch with you this week, to determine the additional information/documentation she may need to process a request for a no-cost extension through June 30, 2006.
>
> Thanks
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/19/2006 11:01 AM

To [redacted]
cc Tamar Nedzar/EAC/GOV@EAC
bcc
Subject Re: No cost extension paperwork

John-

One of our law clerks, Tamar Nedzar, is working with me on the paperwork for your no-cost extension.

She will be in touch with you this week, to determine the additional information/documentation she may need to process a request for a no-cost extension through June 30, 2006.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

04/14/2006 02:06 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: March Progress Report

For the Eagleton contract files

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 04/14/2006 02:01 PM -----

"Tom O'neill"
[redacted]
04/14/2006 12:50 PM

To [redacted]
cc [redacted]
Subject March Progress Report

Karen,

Attached is the Progress Report for March. I think our conversation earlier this week laid out a clear path to a successful conclusion of the project.

Tom O'Neill

Progress ReportMarch06.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
March 2006

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

April 14, 2006

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.7
    - Task 3.8
- Voter Identification Requirements
    - Task 3.10
    - Task 3.11
- Project Management
    - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from March 1 through March 31, 2006. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In March we revisited our research on Provisional Voting to respond to a question from the EAC's Executive Director. We found that the longer the time provided to evaluate provisional ballots, the greater the percentage that are counted. Based on the comments of the Peer Review Group, we revised our statistical analysis of the effects of voter ID requirements on turnout and distributed the revised draft to the PRG again. We received further comments from three PRG members, who expressed confidence in the analysis. Their comments are now reflected in the latest draft, as presented to the EAC on April 3.

We polished the draft report on Voter ID issues based on preliminary comments by the EAC. The results of that revision were incorporated in the briefing we prepared for delivery on April 3 to the EAC Commissioners in Washington. That meeting had originally been envisioned as a Closeout Conference. While we have met the schedule provided under the no-cost extension to the contract, the EAC has requested that we take additional time to revise the Voter ID report based on comments at the April meeting, arrange another meeting of the PRG, and, perhaps, undertake additional research on Voter ID over time. As this report is being prepared, we are exploring those options.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting. Please direct questions or comments about this rep[redacted]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. We received comments on the November draft report in a teleconference on February 22 with EAC Executive Director Tom Wilkey and Contract Manager Karen Lynn-Dyson. We are now revising and polishing the draft in accord with many of the comments by the Commissioners.

We have analyzed the effect of the different time periods for the evaluation of provisional ballots established by the states on the percentage of provisional ballots that end up being counted. The results indicate that longer time periods result in more ballots being counted. That finding will be incorporated in the revised, final draft report.

Time period	Number of States	% PB Counted
< 1 week	14	35.4%
1 – 2 weeks	15	47.1%
> 2 weeks	14	60.8%

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. The EAC has accepted that recommendation. Our final report will include recommendations for promulgation by the Commission as "Best Practices," but will not include a proposed "Guidance Document," referred to in Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance).

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is now the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has completed the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. The results of its work constitutes the compendium of legislation, administrative regulations, and case law called for under this task. This month the Moritz team reviewed state statutes and regulations on the time period allowed for the evaluation of provisional ballots. Its report provided the basis for the statistical analysis of the effect of greater time on the number of ballots counted.

Description: The Moritz team has compiled statutes on Voter Identification, and has provided a summary analysis of its research, including litigation, included in the draft of the Voter ID paper that has now been reviewed by the Peer Review Group.

Progress: The review of current voter identification litigation nationwide is now included in the draft report.

Work Plan: In the remaining month of the project, Moritz and Eagleton will continue to work together to develop best practices in the area of voter identification, based on our combined research and the case law.

RESEARCH EFFORTS

We continue to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification. The table displaying this data is challenging to complete.

VOTER ID AND TURNOUT ANALYSIS

We revised the analysis of the effect of different voter ID requirements on turnout following the meeting of the PRG in February. The revision was distributed to the PRG in March, and 3 members of the PRG commented on the revision at the end of the month. They pointed to a few areas to clarify the analysis and expressed overall confidence in the quality of the work.

Description: The analysis suggests that more stringent voter ID requirements reduce turnout by several percentage points. We reviewed the analysis, looking at participation compared to both the Voting Age Population and the Citizen Voting Age population.

Progress: The PRG review strengthened the analysis. We have incorporated the results in the revised draft of our report, as distributed to the EAC for the April 3 meeting. It is summarized in the PowerPoint presentation prepared in March for the April meeting.

Challenges: The models we are using, while sophisticated, are difficult to run and interpret. The analyses are time-consuming. The PRG's counsel has assisted in meeting this challenge.

Work Plan: We completed a draft of the Voter ID report for the EAC in March. Based on the EAC's comments at the April meeting, we are revising the paper once again for the final report.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: With its meeting to review the Voter ID paper, the PRG completed its work on this project. Several members of the PRG did comment on the revised statistical analysis of voter turnout. Members may be called together again for a review of our final revision, if changes to the schedule are approved by the EAC.

Challenges: No new challenges were encountered.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

As agreed in a telephone conversation with Karen Lynn-Dyson on April 13th, a detail of expenses incurred from the project during March and April will be sent under separate cover in early May to Ms. Dianna Scott, Administrative Officer at the EAC.

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. The contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

Karen Lynn-Dyson/EAC/GOV
04/11/2006 05:05 PM

To [redacted]
cc [redacted]
bcc
Subject Re: Eagleton/Moritz Next Steps

Gents-

May we change the date of our call to Thursday at 3:15 rather than tomorrow at 3:15?

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <[redacted]>

"John Weingart"
[redacted]
04/10/2006 12:33 PM
Please respond to
[redacted]

To [redacted]
cc [redacted]
Subject Re: Eagleton/Moritz Next Steps

Karen - Tom and I are both available this Wednesday or Thursday between 3:15 and 5:00. Any time in there work for you?

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> Will wait to hear from you.
>
> Best-
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/10/2006 04:16 PM

To [redacted]
cc [redacted]
bcc Thomas R. Wilkey/EAC/GOV@EAC; Bert A. Benavides/EAC/GOV@EAC
Subject Re: Eagleton/Moritz Next Steps

Let's chat on Wednesday at 3:15.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <[redacted]>

"John Weingart"
<[redacted]>
04/10/2006 12:33 PM
Please respond to
[redacted]

To [redacted]
cc [redacted]
Subject Re: Eagleton/Moritz Next Steps

Karen - Tom and I are both available this Wednesday or Thursday between 3:15 and 5:00. Any time in there work for you?

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> Will wait to hear from you.
>
> Best-
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/07/2006 12:03 PM

To [redacted]
cc [redacted]
bcc
Subject Re: Eagleton/Moritz February Report

Shall we have a call on Wednesday, April 12 at 1:00?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/07/2006 05:17 PM

To [redacted]
cc [redacted]
bcc
Subject Re: Eagleton/Moritz Next Steps

Will wait to hear from you.

Best-
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/06/2006 05:31 PM

To [redacted]
cc [redacted]
bcc
Subject Re: Eagleton/Moritz February Report

Sorry to have missed you on Monday, John.

I think all of the Commissioners found the sessions extremely helpful and are much clearer about the work that has been done on the Voter ID topic.

Shall you Tom and I have a conversation early next week about next steps- specifically what you anticipate doing on your end to create final reports for both Voter ID and Provisional Voting and what additional feedback, if any, you'd like to get from the EAC prior to submitting these final reports?

We have talked about the possibility of having you all present your final reports at our June public meeting; that idea is still under review, however.

Look forward to hearing from you about a call sometime next week.

Please be certain to thank all of the project staff for coming to DC and taking the time to meet with the Commissioners.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/29/2006 01:38 PM

To [redacted]
cc
bcc
Subject Re: no-cost extension

John-

First presentation runs from 11:00 to 12:30
Second presentation runs from 2:00 to 3:30

See you then

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/29/2006 01:36 PM

To "Tom O'neill" [redacted]
cc
bcc
Subject Re: Census Bureau report on Voting and Registration

Thanks, Tom. Also, can you be certain Tim provides a footnote in his work which defines a probit analysis, as we discussed yesterday?

See you Monday at 11:00.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

03/28/2006 04:50 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc [redacted]

bcc

Subject FYI-Eagleton

Turns out that Eagleton was doing a brief conference call with their project staff this afternoon and they asked me to participate briefly. Looked for you guys and you were in the Commissioner Retreat. Basically shared some very general thoughts with them and framed it as a series of questions/issues that might arise when they make their presentations next week.

Spoke of the CVAP vs. VAP issue, exit polls and CPS data versus using our Election Day survey and speaking with Election Officials about these topics. Also framed the issue of possible bias in their report by suggesting that they start out explaining how and why they have arrived at their statement about voter Id (burdensome, onerous, etc). Also suggested framing this by speaking of African American and elderly voter ID attitudes that appear to contrast with attitudes expressed by Hispanic voters. Did also ask about why they didn't look at Asian voters and if they included the March 15 2006 Census Bureau report in their analysis.

They took these comments under advisement and will be ready to address these and other topics at Monday's meetings.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/16/2006 10:00 AM

To [redacted]
cc
bcc
Subject Re: Voter ID Paper --Final Draft

Tom-

Thanks for getting this to me. I've forwarded it on to the Commissioners.

Will try to see if I can get feedback next week.

Regards-
K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/15/2006 05:37 PM

To [redacted]
cc
bcc
Subject RE: Draft comments on the Provisional Voting document

Hi Tom-

Just checking in on the ETA for the Voter ID Best Practices document.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/24/2006 11:50 AM

To [redacted]
cc [redacted]
bcc
Subject Re: Eagleton/Moritz February Report

Just wanted to let you know that I have asked the Commissioners to provide me feedback on your report by COB today.

I will assemble their comments and pass them on to you by early next week at the latest.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/28/2006 04:05 PM

To [redacted]
cc [redacted]
bcc
Subject Re: Eagleton/Moritz Report

Failed to ask if your report uses/takes into account the March 15,2006 Census Bureau report on Voting and Registration in the election of November 2004.
Assume it does.

Regards-
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/28/2006 10:25 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc
bcc Paul DeGregorio/EAC/GOV@EAC
Subject Fw: Voter ID Paper --Final Draft

Let's discuss once you've had a chance to review. As stated, there are a number of their statistical manipulations which I question.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/28/2006 09:20 AM -----

"Tom O'neill"
[redacted]
03/16/2006 09:27 AM

To [redacted]
cc
Subject RE: Voter ID Paper --Final Draft

Karen,

Glad the paper arrived. Sorry it was a bit later than promised, but we reworked the statistical analysis on the basis of some insightful suggestions by the Peer Review Group. . .that took a few extra days (and nights). Looking back at my email to you, I realize the full statistical analysis was not attached as it should have been. It is appendix to the paper that will be of interest to those who want the details of our methodology. It is attached to this email.

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone [redacted]

Tom O'Neill

-----Original Message-----
From: [redacted]
Sent: Thursday, March 16, 2006 9:00 AM
To: [redacted]
Subject: Re: Voter ID Paper --Final Draft

Tom-

Thanks for getting this to me. I've forwarded it on to the Commissioners.

Will try to see if I can get feedback next week.

Regards-
K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005

tel [redacted]

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns how such requirements affect voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

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This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Each state is classified as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with voter identification requirements ($r = -.21$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.16$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

Differences in voter turnout at the state level in 2004 varied based on voter identification requirements.[2] Taking into account the maximum requirements, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can place the effects of voter identification in a more accurate context. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the

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[2] Voter turnout is defined here as the percentage of the adult voting-age population that voted in November 2004, based on county vote totals reported by the states and U.S. Census population projections for the counties from 2003. McDonald and Popkin (2001) contend that using the voting-age population to calculate turnout understates turnout for a number of reasons. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults exerted a negative effect on voter turnout, as did the percentage of individuals living below the poverty line.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] Thus voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data (p = 0.0003).

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I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .40, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.36 [-0.04 (voter id) - 0.38 (Hispanic) + 0.06 (voter id X Hispanic)].

[Table 3 here]

The effects of the minimum requirements are not statistically significant (p = 0.15). The battleground state variable continues to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate has no statistically significant effect. As in the maximum identification requirements models, as the percentage of the population that is Hispanic or poor increases, turnout declines. As the percentage of elderly increases, so does turnout. The proportion of African-Americans in the population does not affect turnout. Adding interactive effects to the model results in a statistically significant and negative effect of minimum voter identification requirements on turnout. But one must interpret this estimate with caution. A chi-square test for the difference in fit between the two models shows no significant difference (p = 0.08), and thus no improvement to the fit when adding the interactions between voter identification requirements and the percentages of the county that is Hispanic or lives below the poverty line.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991). Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm-Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[5] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the

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[5] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens.

It is important to note here that the voter turnout rate for the CPS sample is much higher than the turnout rates presented in the aggregate data analysis. The U.S. Census Bureau reported that 89 percent of registered voters in the CPS sample said they voted (U.S. Census Bureau 2005). Turnout among the voting-age population was 58 percent in 2004, according to the aggregate data analysis. The difference is a result of several factors. One factor consists of the different denominators in calculating the turnout rate – registered voters versus the much larger voting-age population. Also, previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of a level of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be much higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

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The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election. In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a competitive gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes). Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, and estimated robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[7] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

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Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore

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[7] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

variation in predicted probability by group. I disaggregated the sample by the variable of interest (such as race, for example), omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[8] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

Comment [o2]: The turnout figures shown in the analysis of the aggregate data range of 57.3% turnout to 63.1% turnout. When using the individual data, based on self-reports, the turnout figures approach 90%. I think a couple of sentences explaining the difference in the data between the two different analyses would be helpful here, even for readers comfortable with the statistical techniques used.

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The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent if the maximum requirement would be to state one's name, and the probability drops 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

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Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[9]

[Table 8 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify

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[8] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

[9] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 9 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

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Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

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In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[10] Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

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[10] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

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Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	63.1 %	**State Name**	61.3 %
Sign Name	58.6 %	**Sign Name**	60.4 %
Match Signature	62.1 %	**Match Signature**	59.2 %
Provide Non-Photo ID	57.8 %	**Provide Non-Photo ID**	57.6 %
Provide Photo ID	57.3 %	**Swear Affidavit**	58.7 %
Average Turnout for All States	59.6 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.70	0.02
Voter ID requirements	-0.02**	0.004	-0.04**	0.005
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.50**	0.03	0.51**	0.03
% African-American	0.02	0.01	0.04	0.04
% Hispanic	-0.17**	0.01	-0.38**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8234.5		-8253.5	

Coefficients are restricted maximum likelihood estimates. N = 3,112. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.62	0.01	0.66	0.02
Voter ID requirements	-0.008	0.005	-0.02**	0.006
Battleground State	0.04**	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.50**	0.03	0.49**	0.03
% African-American	0.02	0.01	0.02	0.03
% Hispanic	-0.17**	0.01	-0.37**	0.05
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8222.7		-8229.4	

Coefficients are restricted maximum likelihood estimates. N = 3,112. * $p < .05$ ** $p < .01$ (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		Minimum requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05** p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model		
	Maximum requirement	**Minimum requirement**
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.759	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Comment [o3]: Can you add something to this footnote to once again clarify the difference between the very high turnout figures derived from the CPS respondents self-reports and actual measures of turnout which tend to be in the 50% -- 65% range.

Table 8. Predicted probability of voter turnout – Voters above and below the poverty line

	Voters above the poverty line		Voters below the poverty line
	Maximum requirement	Minimum requirement	Minimum requirement
State name	0.920	0.922	0.784
Sign name	0.915	0.915	0.772
Match signature	0.909	0.907	0.758
Non-photo ID	0.903	0.899	0.745
Photo ID	0.897	----	----
Affidavit	----	0.891	0.731
Total difference from lowest to highest	0.023	0.031	0.053
N	49,935		5,038

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters who were below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Karen Lynn-Dyson/EAC/GOV
03/30/2006 12:48 PM

To [redacted]
cc [redacted]
bcc
Subject RE: Meeting with EAC April 1

Greetings All-

Tom O'Neill and I just had a good conversation in which I shared with him the Commissioners comments regarding Monday's meeting.

Long story short- they envision this meeting as one of a question and answer exchange, and not a close-out meeting per se.

They found the process used for the Provisional Voting paper quite satisfying and wish to repeat such a process with this piece of research. Once the Commissioner's have had an opportunity to participate in this exchange I will gather their feedback and share it with Tom and John.

We anticipate that we will have to extension to the Eagleton/Moritz contract in order to accommodate this process and to allow for incorporating these comments into a final draft which will be created.

Look forward to seeing all of you on Monday.

Regards-
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/06/2006 05:24 PM

To [redacted]
cc [redacted]
bcc Gracia Hillman/EAC/GOV@EAC; Sheila A. Banks/EAC/GOV@EAC
Subject Re: Information requested by Commissioner Hillman

Thanks Tim.

I'll be certain to pass your response on to the Commissioner.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tim Vercellotti" [redacted]>

"Tim Vercellotti"
[redacted]>
04/06/2006 04:42 PM
Please respond to
[redacted]

To [redacted]
cc [redacted]
Subject Information requested by Commissioner Hillman

Karen:

It was good to meet with you, your colleagues, and the commissioners on Monday. The feedback has been very helpful as I revise my part of the voter identification study.

Commissioner Hillman asked during and after the meeting for some information from the Current Population Survey. She was curious about the percentage of non-citizens who said they were registered to vote, and the percentage of non-citizens who said they voted in the 2004 election.

I've looked at the questionnaire and the data. The question about citizenship preceded the questions about registration and voting in the survey. If a respondent said she or he was not a citizen of the United States, the respondent did not receive the questions on registration and voting. So, at least from this data set, I cannot discern the percentage of non-citizens who claimed to be registered or to have voted. (That would be fascinating information, indeed.)

Best regards,

Tim Vercellotti
--
Tim Vercellotti, Ph.D.
Assistant Research Professor
Assistant Director, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics
Rutgers, The State University of New Jersey

185 Ryders Lane
New Brunswick, NJ 08901
[redacted]

Karen Lynn-Dyson/EAC/GOV
11/15/2005 11:23 AM

To [redacted]
cc
bcc
Subject Fw: Provisional Voting Report Status and Request for Advice

FYI-

Perhaps we can discuss in the next day or so.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 11/14/2005 11:22 AM -----

Karen Lynn-Dyson/EAC/GOV
11/15/2005 11:22 AM

To [redacted]
cc [redacted]
Subject Re: Provisional Voting Report Status and Request for Advice

John-

Many thanks for getting this draft document to us.

Over the next day or so I will spend time with key EAC staff reviewing the document and considering your questions. As you may recall, Commissioner Martinez has taken a prominent role in the review of your initial work and I am certain he will continue to do so. Sadly, the Commissioner lost his mother two weeks ago and, consequently, will not return to the office until next week.

It is likely that EAC staff will not be able to give you a definitive answer on some of your questions until the Monday after Thanksgiving. I will, however, try to answer some of the administrative questions before that time.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <[redacted]>

"John Weingart"
<[redacted]>

11/15/2005 10:53 AM

Please respond to [redacted]

To "Karen Lynn-Dyson" [redacted], "Ruth Mandel" [redacted]

cc "Tom O'Neill" [redacted]

Subject Provisional Voting Report Status and Request for Advice

Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18^th . Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?

2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule realistic in anticipating EAC comments no later than the week of December 12^th on the report we send you at the end of this week?

3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)

4. In any case, we will need a no-cost extension to the contract to carry us past December 31^st . How do we make that request?

5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

KeyDatesRev1110.doc

Deliberative Process Privilege

DRAFT FOR DISCUSSION

REVISED SCHEDULE FOR EAC PROJECT

November 2005 – February 2006

November 10, 2005

Assumes no guidance document, only analysis and recommended best practices

DATE	Project Management	Provisional Voting	Voter ID
Week of 10/31		Review draft report to EAC (Team) Submit comments on report (Team)	Voter ID Research to TV
Week of 11/7	Status reports to JD for October tasks (all)	Redraft report (TON) Review and approve report (Team) Final draft report (TON)	Research continues (TV)
Week of 11/14	Submit monthly progress report (JD)	**Submit report to EAC for review** and to PRG for information Discuss with EAC use of Board of Advisors to expand "best practices." (TON, JW) EAC reviews report	Research continues (TV)
Week of 11/21		EAC review continues	Complete data collection for Voter ID analysis. (TV)
Week of 11/28		EAC review continues	Draft report on Voter ID analysis (TV)

Week of 12/5	Status reports to JD for November tasks (all)	EAC review continues	Internal review (PT)
Week of 12/12	Submit monthly progress report (JD)	Receive EAC comments on report Revise and PT review	Revise draft (TV) Draft alternatives (TON) Review and comment on alternatives (PT)
Week of 12/19		**Finalize analysis and best practices to EAC for publication**[1]	Complete draft report and alternatives (TV, TON)
Week of 12/26			Review draft report and alternatives (PT)
Week of 1/2/06	Status reports to JD for December tasks (all)		**Report and alternatives to PRG**
Week of 1/9/06			PRG meets and comments Revise (TV & TON)

---

[1] If the EAC chooses not to issue a Guidance Document on provisional voting but only to recommend "best practices," the register publication, hearing and comment period may not be required, which would shorten the process by at least 30 days.

Week of 1/16/06	Submit monthly progress report (JD)		**Submit draft report, alternatives and compendium to EAC** EAC reviews
Week of 1/23/06			EAC review continues
Week of 1/30/06			Comments from EAC Revise (TV & TON)
Week of 2/6/06	Status reports to JD for January tasks (all)		Review and approve revised report and recommendations for best practices (PT)
Week of 2/13/06	Submit monthly progress report (JD)		**Submit report and best practices to EAC**
Week of 2/20/06	FINAL status reports to JD for all tasks (all) Final project and fiscal report to EAC **PROJECT ENDS**		

Margaret Sims /EAC/GOV
11/16/2005 01:12 PM

To [redacted]
cc Sheila A. Banks/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Gavin S.
bcc
Subject RESPONSE REQUESTED-Working Group for Voting Fraud and Voter Intimidation Project

Dear Commissioners:

The consultants' contracts for EAC's voting fraud and voter intimidation project require Tova Wang and Job Serebrov to work in consultation with EAC staff and the Commissioners "to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation". The contracts do not specify the number of working group members but, as EAC has to pay for the group's travel and we want the size of the group to be manageable, I recommend that we limit the number to 6 or 8. **Please let me know if you think that this limit is too conservative** .

Attached **for your review and comment** are two lists of potential working group members for this project. One list was submitted by Job, the other by Tova. Tova and Job have provided brief summaries of each candidate's relevant experience and have placed asterisks next to the names of the individuals whom they particularly recommend. I can provide more extensive biographies of these individuals, if you need them. If EAC agrees that the recommended working group members are acceptable, an equal number may be selected from each list in order to maintain a balanced perspective.

Absent from the attached lists is the name of a representative from the U.S. Department of Justice's Election Crimes Branch. At this time, I am working through the DOJ bureaucracy to determine to what degree Craig Donsanto will be permitted to participate. If he cannot be named as a working group member, we may still be able to use him as a resource.

Please provide your feedback to me no later than Monday , November 28. I am available to meet with you if you would like to discuss this matter further.

Peggy Sims
Research Specialist

Possible Working Group Members -Serebrov.doc Possible Working Group Members- Wang.doc

Deliberative Process Privilege

Possible Working Group Members - Serebrov

I recommend the first four with an *

***Mark (Thor) Hearne II**-Counsel to Republican National Committee; National Counsel to American Center for Voting Rights; National election counsel to Bush-Cheney, '04; Testified before U.S. House Administration Committee hearings into conduct of Ohio presidential election; Academic Advisor to Commission on Federal Election Reform (Baker-Carter Commission).

***Todd Rokita**-Secretary of State, Indiana; Secretary Rokita strives to reform Indiana's election practices to ensure Indiana's elections are as fair, accurate and accessible as possible; Secretary Rokita serves on the nine-member Executive Board of the Election Assistance Commission Standards Board, charged by federal law to address election reform issues.

***Patrick J. Rogers**-Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico; 1991-2003 General Counsel to the New Mexico Republican Party; Election cases: *The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures; *Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge; *Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues; *Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues; *Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

***David A. Norcross**- Partner, Blank Rome LLP, Trenton NJ, Washington D.C; Chairman, New Jersey Republican State Committee, 1977 – 1981; General Counsel, Republican National Committee, 1993 – 1997; General Counsel, International Republican Institute; Counsel, The Center for Democracy; Vice Chairman, Commission on Presidential Debates;
Executive Director, New Jersey Election Law Enforcement Commission

Benjamin L. Ginsberg-Served as national counsel to the Bush-Cheney presidential campaign; He played a central role in the 2000 Florida recount; He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and

National Republican Congressional Committee; His expertise is more in campaign finance.

Cleta Mitchell-Partner in the Washington, D.C. office of Foley & Lardner LLP; She advises corporations, nonprofit organizations, candidates, campaigns, and individuals on state and federal election and campaign finance law, and compliance issues related to lobbying, ethics and financial disclosure; Ms. Mitchell practices before the Federal Election Commission and similar federal and state enforcement agencies; Her expertise is more in campaign finance law.

Mark Braden-Of counsel at Baker & Hostetler; He concentrates his work principally on election law and governmental affairs, including work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting; His expertise is mainly outside of the voter fraud area.

Deliberative Process Privilege

To: Peggy Sims
From: Tova Wang
Re: Working Group Recommendations
Date: November 12, 2005

*Wendy R. Weiser, Associate Counsel in the Democracy Program at the Brennan Center for Justice at NYU School of Law and an expert in federal and constitutional law, has done a great deal of research, writing, speaking, and litigating on voting rights and election law issues. As part of the Brennan Center's wide ranging activities in the area of democracy, Ms. Weiser is currently overseeing an analysis and investigation of recent allegations of voter fraud throughout the country.

*Barbara Arnwine is Executive Director of the Lawyers Committee for Civil Rights Under Law, an organization that for four decades has been at the forefront of the legal struggle to secure racial justice and equal access to the electoral process for all voters. Notably, Ms. Arnwine and the organization have led the Election Protection program for the last several years, a nationwide grassroots education and legal effort deploying thousands of volunteers and using a nationally recognized voter hotline to protect voters' rights on election day.

*Daniel Tokaji, professor and associate director of the Election Law Center at the Moritz College of Law at the Ohio State University, is one of the nation's foremost experts in election law and reform and ensuring equality in the voting system. Professor Tokaji frequently writes and speaks on democracy related issues at academic and practitioner conferences, on such issues as voting technology, fraud, registration, and identification requirements, as well as the interplay between the election administration practices and voting rights laws.

Donna Brazile is Chair of the Democratic National Committee's Voting Rights Institute, the Democratic Party's major initiative to promote and protect the right to vote created in response to the irregularities of the 2000 election, and former Campaign Manager for Gore-Lieberman 2000 (the first African American to lead a major presidential campaign.) Brazile is a weekly contributor and political commentator on CNN's Inside Politics and American Morning, a columnist for Roll Call Newspaper and a contributing writer for Ms. Magazine.

Wade Henderson is the Executive Director of the Leadership Conference on Civil Rights (LCCR) and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), an organization at the forefront of defending voting rights for the last fifty years. Prior to his role with the Leadership Conference, Mr. Henderson was the Washington Bureau Director of the National Association for the Advancement of Colored People (NAACP)

Robert Bauer is the Chair of the Political Law Practice at the law firm of Perkins Coie, National Counsel for Voter Protection, Democratic National Committee, Counsel to the Democratic Senatorial and Congressional Campaign Committees and Co-Author, Report of Counsel to the Senate Rules and Administration Committee in the Matter of the United States Senate Seat from Louisiana in the 105th Congress of the United States, (March 27, 1997). He is the author of *United States Federal Election Law*, and one of the foremost attorneys in the country in the area of federal/state campaign finance and election laws.

Laughlin McDonald has been the executive director of the Southern Regional Office of the ACLU since 1972 and as the Director of the ACLU Voting Rights Project, McDonald has played a leading role eradicating discriminatory election practices and protecting the gains in political participation won by racial minorities since passage of the 1965 federal Voting Rights Act. During the past two decades, McDonald has broken new ground by expanding ACLU voting rights cases to include representation of Native Americans in various western states, and written innumerable publications on voting rights issues.

Joseph E. Sandler is a member of the firm of Sandler, Reiff & Young, P.C., in Washington, D.C., concentrating in campaign finance and election law matters, and general counsel to the Democratic National Committee. As an attorney he has handled campaign finance and election law matters for Democratic national and state party organizations, Members of Congress, candidates and campaigns. He served as general co-counsel of the Association of State Democratic Chairs, as general counsel for the Democratic Governors' Association and as counsel to several state Democratic parties.

Cathy Cox is serving her second term as Georgia's Secretary of State, having first been elected in 1998. In 2002 she earned re-election with over 61 percent of the vote, winning 146 out of 159 counties. Because of Secretary Cox's efforts Georgia has become a national leader in election reform. Her initiative made Georgia the first state in America to deploy a modern, uniform electronic voting system in every county

Karen Lynn-Dyson/EAC/GOV

08/22/2006 11:21 AM

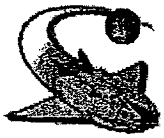
To Elieen L. Collver/EAC/GOV@EAC

cc

bcc

Subject Here ya go!

Prov Votingdarrell.rtf Provisional Voting Advisory.doc Provisional Voting intro.doc EAC Guidance on Provisional Voting.rtf Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123



Elieen L. Collver/EAC/GOV
05/15/2007 02:40 PM

To Peter Schulleri/EAC/GOV@EAC
cc
bcc
Subject Fw: Here ya go!

Elle L.K. Collver
Special Assistant to the Chair
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
office: (202) 566-2256
fax: (202) 566-1392
blackberry: (202) 294-9251

----- Forwarded by Elieen L. Collver/EAC/GOV on 05/15/2007 02:28 PM -----

Karen Lynn-Dyson/EAC/GOV
08/22/2006 11:21 AM

To Elieen L. Collver/EAC/GOV@EAC
cc
Subject Here ya go!

Prov Votingdarrell.rtf Provisional Voting Advisory.doc Provisional Voting intro.doc EAC Guidance on Provisional Voting.rtf Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

RECOMMENDA TrONS

Because every provisional ballot counted represents a voter who, if the system had worked .. perfectly, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that ballot, but the voter will still have to vote provisionally. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and particularly within . states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greaterconsistency in the administration of provisional voting.

Self-evaluation of Provisional Voting -4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a Qualitv-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of c1aritv

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

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PCL XL error

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        Error:      IllegalOperatorSequence

        Operator:   SetPageScale

        Position:   642
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U.S. Election Assistance Commission
1225 New York Ave. – Suite 1100
Washington, DC 20005

DATE!!!!!!

EAC Advisory 2005-006: Provisional Voting and Identification Requirements

The U.S. Election Assistance Commission (EAC) has recently received an inquiry regarding whether a state may impose an identification requirement that would limit a potential voter's access to a provisional ballot to which he or she is otherwise entitled under Section 302 of the Help America Vote Act (HAVA) (42 U.S.C. §15482). After consideration of the matter, EAC has concluded that Section 302 of HAVA creates a voter right. Specifically, the section creates the right for a potential voter to utilize a provisional ballot in the event their name does not appear on the registration list or the voter's eligibility is challenged by an election official. While States may create voter identification standards that exceed those laid out in HAVA and effect whether a provisional ballot is counted, States may not take action that limits a voter's right to receive and submit a provisional ballot. In explaining this position, this advisory reviews the plain language of HAVA Section 302, examines the differences between traditional and provisional ballots and analyzes the implementation of provisional voting under HAVA Section 303(b). This advisory also addresses the impact of a state's authority to create stricter standards than prescribed by HAVA upon HAVA's provisional voting requirements.[1]

Plain Language of HAVA Section 302. The right to cast a provisional ballot is created in Section 302 of HAVA. Pursuant to HAVA, when an individual declares that he or she is a registered and eligible voter in a federal election, that individual "shall be permitted to cast a provisional ballot" if (1) their name does not appear on the official list of eligible voters or (2) "an election official asserts that the individual is not eligible to vote." (Section 302(a)). This right to receive a provisional ballot is contingent upon only one thing (per Section 302(a)(2)), the individual's execution of a written affirmation that he or she is both a registered and eligible voter for the election at issue.[2] See also, Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 574 (6th Cir. 2004). However, notwithstanding the above, HAVA goes on to recognize that the right to submit a provisional ballot constitutes neither a means to avoid State imposed voter eligibility requirements nor a vote. Instead, HAVA requires election officials at a polling place to

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[1] The EAC is the Federal agency charged with the administration of HAVA. While the EAC does not have rulemaking authority in the area of provisional voting, HAVA does require the Commission to draft guidance to assist states in their implementation of HAVA's provisional voting requirements. Although EAC's administrative interpretations do not have the force of law associated with legislative rules, the Supreme Court has long held that the interpretations of agencies charged with the administration of a statute are to be given deferential treatment by Courts when faced with issues of statutory construction. York v. Secretary of Treasury, 774 F. 2d 417, 419 – 420 (10th Cir. 1985) (citing Compensation Commission of Alaska v. Aragon, 329 U.S. 143, 153 – 154 (1963)) See also Christian v. Harris County, 529 U.S. 576 (2000); Edelman v. Lynchburg College, 122 S. Ct. 1145 (2002).

[2] Moreover, a potential voter determined not to be eligible must be informed of their provisional voting rights per Section 302(a)(1) of HAVA.

transmit a provisional ballot (or information associated with the written affirmation) to appropriate election officials for verification. (Section 302(a)(4) of HAVA). These election officials ultimately determine the voter's eligibility based upon information presented to or gathered by it, in accordance with State law. In this way, the State determines whether any provisional ballot submitted will be counted as a vote. Id.

In simplest terms, provisional voting represents the right of an individual (whose eligibility to vote has been challenged), to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. See Sandusky County Democratic Party, 387 F.3d at 570 and Florida Democratic Party v. Hood, 342 F.Supp 1073, 1079-1080 (N.D. Fla. 2004). A provisional ballot does not represent a different way to vote, nor does it serve as a bypass to State laws governing voter eligibility. Rather, it is designed to prevent an individual from losing his or her right to vote due to the fact that a poll worker did not have all the information available or needed to accurately assess voter eligibility. Thus, based upon the plain language of Section 302(a) of HAVA, a challenge to an individual's eligibility to vote (such as a challenge based upon identification requirements) cannot serve as a bar to the receipt of a provisional ballot, because it is the election official's challenge that triggers the provisional ballot procedure in the first place. To hold otherwise would defeat the purpose of provisional voting. In the end, to understand this concept one must understand the differences between traditional and provisional ballots.

Traditional vs. Provisional Ballots. The nature and procedures associated with a provisional ballot are wholly distinct from those of a traditional ballot. Because of this fact, the two processes must be treated differently. While voter identification requirements may serve as a bar to the casting of a traditional ballot, they may not prevent the submission of a provisional ballot.

First, the nature and purpose of traditional and provisional ballots are essentially different. The purpose of a traditional ballot is to allow a confirmed, eligible voter to cast a vote. The purpose of a provisional ballot is to allow individuals whose voter eligibility is challenged to reserve the right to vote by memorializing both their intent to vote and their proposed vote. This is evident by the HAVA processes discussed above. The bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not. A traditional ballot is cast only after voter eligibility has been determined by the State. Hence, the moment it is cast, it becomes an individual's vote. On the other hand, the submission or casting of a provisional ballot is not a vote. Rather, it is a claim that the potential voter who submitted it has the right to vote and reserves that right. As the Sixth Circuit Court of Appeals stated:

> [T]he primary purpose of HAVA was to prevent on-the-spot denials of provisional ballots to voters deemed ineligible to vote by poll workers. Under HAVA, the only permissible requirement that may be imposed upon a would-be voter before permitting that voter to cast a provisional ballot is the affirmation contained in [42 U.S.C.] §15482(a): that the voter is a registered voter in the jurisdiction in which he or she desires to vote, and that the voter is eligible to vote in an election for federal office. Sandusky County Democratic Party, 387 F.3d at 574.

This goes to the very heart of provisional voting. If provisional voting is a right triggered by an election official's determination that an individual has not met a voter eligibility requirement, how can such a requirement also serve as a bar to that right? The concept of provisional voting works only if the right is always available when the application of voter eligibility requirements is in question.

Second, consistent with the differences in purpose between traditional and provisional ballots, the other major distinction between the two lies in the application of voter eligibility requirements. This difference is primarily one of procedural timing. States have the right to create voter eligibility requirements and these requirements must be applied to both traditional and provisional ballots. In casting a traditional ballot, one must meet all eligibility requirements prior to receiving the ballot. However, in the provisional process, the potential voter has already failed to meet these preliminary requirements and the application of State law must occur after the ballot has been received. State voter eligibility requirements should be applied after the provisional ballot and/or supporting affirmation has been transmitted pursuant to Section 302(a)(3) of HAVA. Provisional ballots are counted as votes only after election officials have determined that the individual can meet voter eligibility standards consistent with state law. Again, the purpose of the process is to allow election officials more time, so that they may have more perfect information when making a decision about voter eligibility. Provisional ballots are subject to the full effect of State law regarding the eligibility to vote and the opportunity the law provides provisional voters to supply additional information. Provisional ballots do not escape state or federal voter eligibility requirements, those provisional ballots that do not meet State standards will not be counted.

Provisional Voting Under HAVA Section 303(b). Congress provided an example of how provisional voting works by applying the right to a specific circumstance. Section 303(b)(2)(B) of HAVA, entitled *Fail-Safe Voting*, provides that when a first-time voter who registered by mail is required by HAVA Section 303(b) to show identification, that person must be given a provisional ballot if he or she fails to provide such identification at the polling place. This section is important as it clarifies Congressional intent regarding how provisional voting should function.

The *Fail-Safe Voting* provision of Section 303(b)(2)(B) grants clear insight into how provisional voting should be implemented. While Section 303(b) deals with a specific subset of voters (first-time voters who registered by mail), its application of Section 302(a) supports the concept that a provisional ballot must be given to a voter who is determined (at the polling place) not to meet voter identification requirements. A review of the section shows that in the one area where HAVA set a Federal voter identification requirement Congress made clear that an individual's failure to meet this eligibility requirement triggered the statute's provisional voting section. Congress saw no difference between an individual's failure to meet the voter identification requirements it issued in Section 303(b) and the failure to meet eligibility requirements which trigger provisional voting under Section 302. Section 303(b) makes it clear that Congress did not intend voter identification requirements to limit access to provisional voting. Instead, Congress viewed provisional voting as a right, or more specifically, as a fail-safe. The EAC strongly believes that HAVA provisions must be interpreted to bring about consistent and evenly applied results. In this case, if individuals who fail to meet Federal identification standards have the right to a provisional ballot, so must individuals who fail to meet similar State standards.

Stricter Eligibility Standards and Provisional Voting. HAVA specifically provides that States may create stricter voter eligibility standards than provided in HAVA.[3] Arizona's "Proposition 200" identification requirements are a prime example of this authority. However, the HAVA authority to create stricter eligibility standards does not grant the state authority to create standards that bar access to a provisional ballot. To interpret HAVA otherwise (i.e. allowing stricter state identification standards to bar access to provisional ballots) would render HAVA's provisional voting mandate (Section 302) void and meaningless. HAVA cannot be read to grant both (1) the right to a provisional ballot if an individual's voting eligibility is challenged by a State and, (2) the right of that State to deny an individual a provisional ballot if they do not meet voter eligibility standards. These concepts are mutually exclusive. HAVA cannot be interpreted to allow a State to create voter eligibility standards that bar the Section 302 right to cast a provisional ballot without nullifying the effect and intent of that provision. Any such interpretation of HAVA would run afoul of both HAVA Section 304 and longstanding principles of statutory construction.

First, HAVA notes in Section 304 that while States may create standards that are stricter that those established under HAVA, this authority is limited to the extent "such State requirements are not inconsistent with the Federal requirements under [HAVA]." Clearly, provisional voting is a requirement under HAVA. Section 302(a) notes that qualified individuals "**shall** be permitted to cast a provisional ballot." (Emphasis added). In this way, States may not create standards that are inconsistent or interfere with the provisional voting mandate.

Furthermore, long established principles of statutory construction further prohibit an interpretation of HAVA that would render any of its provisions meaningless. It is "'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" TRW Inc. v. Andrews, 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001), (quoting Duncan v. Walker, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)).

A Stricter Provisional Voting Standard. As discussed above, States' have the right to impose stricter requirements than those laid out in HAVA. The EAC has already made it clear, above, that a stricter voter eligibility requirement cannot be read to bar an individual's right to a provisional ballot. However, could a stricter requirement regarding provisional voting serve to limit access to such ballots? No. A stricter State requirement for provisional voting would be a standard that enhances a person's access to a provisional ballot. As the Sixth Circuit noted, "HAVA is quintessentially about being able to cast a provisional ballot." Sandusky County Democratic Party, 387 F.3d at 576. "HAVA's requirements 'are minimum requirements' permitting deviation from its provisions provided that such deviation is 'more strict than the requirements established under' HAVA (**in terms of encouraging provisional voting)**...." Id., (quoting 42 U.S.C. §15484, emphasis added). Thus, in terms of provisional voting, a stricter standard is one that serves to further encourage provisional voting. When passing laws affecting provisional voting, States must ensure that their provisions are consistent with HAVA or otherwise serve to further an individual's access to a provisional ballot. EAC concludes that any policy asserting that States may pass laws limiting access to provisional ballots conflicts with HAVA.

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[3] See 42 U.S.C. §§15485 – 15485, entitled *Minimum Requirements* and *Methods of Implementation Left to Discretion of State*, respectively.

Conclusion. A state may not impose an identification requirement that would limit a potential voter's access to and submission of a provisional ballot. However, such requirements (when coupled with a state's provisional ballot procedures) may prevent a provisional ballot from being counted.

Gracia Hillman Chair	Paul DeGregario Vice Chairman
Ray Martinez III Commissioner	Donetta Davidson Commissioner

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On September 13, 2005 the U.S.. Election Assistance Commission issued an advisory (2005-006) and, after consideration of the matter EAC concluded that Section 302 of HAVA creates a voter right. Specifically, the section creates the right for a potential voter to utilize a provisional ballot in the event his or her name does not appear on the registration list or the voter's eligibility is challenged by an election official. While States may create voter identification standards that exceed those laid out in HAVA and effect whether a provisional ballot is counted, States may not take action that limits a voter's right to receive and submit a provisional ballot.

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In simplest terms, provisional voting represents the right of an individual (whose eligibility to vote has been challenged), to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. A provisional ballot does not represent a different way to vote, nor does it serve as a bypass to State laws governing voter eligibility. Rather, it is designed to prevent an individual from losing his or her right to vote due to the fact that a poll worker did not have all the information available or needed to accurately assess voter eligibility. Thus, based upon the plain language of Section 302(a) of HAVA, a challenge to an individual's eligibility to vote (such as a challenge based upon identification requirements) cannot serve as a bar to the receipt of a provisional ballot, because it is the election official's challenge that triggers the provisional ballot procedure in the first place. To hold otherwise would defeat the purpose of provisional voting. In the end, to understand this concept one must understand the differences between traditional and provisional ballots.

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evident by the HAVA processes discussed above. The bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not. A traditional ballot is cast only after voter eligibility has been determined by the State. Hence, the moment it is cast, it becomes an individual's vote. On the other hand, the submission or casting of a provisional ballot is not a vote. Rather, it is a claim that the potential voter who submitted it has the right to vote and reserves that right.

This goes to the very heart of provisional voting. If provisional voting is a right triggered by an election official's determination that an individual has not met a voter eligibility requirement, how can such a requirement also serve as a bar to that right? The concept of provisional voting works only if the right is always available when the application of voter eligibility requirements is in question.

Section 303(b)(2)(B) of HAVA, entitled *Fail-Safe Voting*, provides that when a first-time voter who registered by mail is required by HAVA Section 303(b) to show identification, that person must be given a provisional ballot if he or she fails to provide such identification at the polling place. This section is important as it clarifies Congressional intent regarding how provisional voting should function.

The *Fail-Safe Voting* provision of Section 303(b)(2)(B) grants clear insight into how provisional voting should be implemented. While Section 303(b) deals with a specific subset of voters (first-time voters who registered by mail), its application of Section 302(a) supports the concept that a provisional ballot must be given to a voter who is determined (at the polling place) not to meet voter identification requirements. Congress saw no difference between an individual's failure to meet the voter identification requirements it issued in Section 303(b) and the failure to meet eligibility requirements which trigger provisional voting under Section 302. Section 303(b) makes it clear that Congress did not intend voter identification requirements to limit access to provisional voting. Instead, Congress viewed provisional voting as a right, or more specifically, as a fail-safe. The EAC strongly believes that HAVA provisions must be interpreted to bring about consistent and evenly applied results. In this case, if individuals who fail to meet Federal identification standards have the right to a provisional ballot, so must individuals who fail to meet similar State standards.

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In simplest terms, provisional voting represents the right of an individual (whose eligibility to vote has been challenged), to reserve his or her right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. A provisional ballot does not represent a different way to vote, nor does it serve as a bypass to State laws governing voter eligibility. Rather, it is designed to prevent an individual from losing his or her right to vote due to the fact that a poll worker did not have all the information available or needed to accurately assess voter eligibility. Thus, based upon the plain language of Section 302(a) of HAVA, a challenge to an individual's eligibility to vote (such as a challenge based upon identification requirements) cannot serve as a bar to the receipt of a provisional ballot, because it is the election official's challenge that triggers the provisional ballot procedure in the first place. To hold otherwise would defeat the purpose of provisional voting. In the end, to understand this concept one must understand the differences between traditional and provisional ballots.

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States' have the right to impose stricter requirements than those laid out in HAVA. The EAC has made it clear, that a stricter voter eligibility requirement cannot be read to bar an individual's right to a provisional ballot. However, could a stricter requirement regarding provisional voting serve to limit access to such ballots? No. A stricter State requirement for provisional voting would be a standard that enhances a person's access to a provisional ballot. A state may not impose an identification requirement that would limit a potential voter's access to and submission of a provisional ballot. However, such requirements (when coupled with a state's provisional ballot procedures) may prevent a provisional ballot from being counted.

OVERVIEW OF RECOMMENDATIONS FOR SUCCESSFUL PRACTICES

The wide variation in the implementation of provisional voting among and particularly within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Self-evaluation of Provisional Voting -4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of sound practices should provide the starting point for a state's effort to improve its provisional voting system.

SUMMARY OF RECOMMENDATIONS FOR Sound PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a Quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

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The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of sound practices should provide the starting point for a state's effort to improve its provisional voting system.

SUMMARY OF RECOMMENDATIONS FOR Sound PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a Quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

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PCL XL error

        Subsystem:  KERNEL

        Error:      IllegalOperatorSequence

        Operator:   SetPageScale

        Position:   1528
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Peter Schulleri/EAC/GOV
08/29/2006 12:57 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject ATTACHED: USEAC Guidance on Provisional Voting__Final - version 1

Peter Schulleri/EAC/GOV
08/29/2006 11:54 AM

To Amie J. Sherrill/EAC/GOV
cc
Subject ATTACHED: USEAC Guidance on Provisional Voting__Final - version 1

Hello,

Respectfully,

Peter Schulleri USEAC Guidance on Provisional Voting__Final-v1.doc
Contract Specialist
U.S. Election Assistance Commission
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U.S. Election Assistance Commission
Guidance on Provisional Voting

Provisional voting can be defined as the right of an individual voter to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. The idea behind a provisional ballot is to maintain the person's intent to vote and their proposed vote until such time as it is determined that they do or do not have the right to cast a ballot in that area. The Help America Vote Act (HAVA) provides definitive protection of a person's right to receive a provisional ballot. Section 302 of HAVA mandates that in the event a person does not appear on the registration list or their eligibility is challenged by an election official the person shall be given a provisional ballot as long as they are willing to declare that: 1) he/she is a registered voter and 2) he/she is eligible to vote in the election at issue. If a voter will declare these two things in the form of a written affirmation then HAVA mandates that the voter must be given a chance to cast a provisional ballot. This means that States still maintain complete control over voter identification requirements and determination of which provisional ballots meet those ID requirements. However, before making the determination of whether a voter has the right to cast a ballot at that polling place or not, the State and local officials must first offer the person a provisional ballot in order to protect that person's right to vote. This means that a provisional ballot is neither a means to avoid State imposed voter eligibility requirements nor a vote itself. State voter eligibility requirements are applied and provisional ballots are subject to the full effect of State law regarding voter eligibility. However, States may not refuse to offer a provisional ballot to a voter who's right to vote is being challenged. To refuse to give a provisional ballot to such a voter would defeat the primary purpose of HAVA which has been Stated as "...to prevent on-the-spot denials of provisional ballots to voters deemed ineligible by poll workers."

Because much of the decision making as to provisional balloting is left up to the States many different approaches have been adopted. For instance in some States a voter can cast a provisional ballot in any precinct in the State regardless of where they are registered, where as in other States provisional ballots are only counted if they are cast in the precinct or county in which the voter was eligible to vote. The key is a consistent approach within the state so that all voters are treated the same. Also, many States choose to use the information provided on the provisional ballot to help register the voter for the next election. This takes advantage of the provisional voting system by preventing the same registration issues from arising in the next election. The most important thing to remember is provisional balloting was created in order to allow the greatest number of people the opportunity to vote. By so doing provisional balloting represents a positive step by the states to prevent the disenfranchisement of voters. It allows the voter a final opportunity to cast a vote even if their eligibility is in question. Where once a voter would not have been given a chance to vote thanks to a provisional ballot that right is maintained. Given the mandate by HAVA to offer a provisional ballot the following information is intended to guide States in the administration of the provisional balloting process and offer good practices in State's approach to provisional balloting.

BACKGROUND

There is wide variation in the implementation of provisional voting among and even within states. Nonetheless, recommendations for good or at least better practices based on the experience gained in the 2004 election can be useful in states' efforts to implement provisional voting policies and procedures that are fair, transparent and effective.

Every provisional ballot counted represents a voter who should have been able to vote by regular ballot. And while statewide registration databases are likely to reduce the use of provisional ballots, such databases are not likely to make this difference for those who did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that a person is registered but the voter will still have to vote provisionally. Provisional voting will remain an important failsafe method of voting, and voters should have confidence that the failsafe will operate correctly.

The EAC recommends that all States strive for best practices in provisional voting.

OVERVIEW OF RECOMMENDATIONS FOR SOUND PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending certain practices, the EAC offers informed advice while respecting diversity among the states.

Take a quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending that:

- Each state collect data systematically on the provisional voting process to permit consistent evaluation of its procedures and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate provisional ballots by jurisdiction.

Self-evaluation of Provisional Voting - 4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently structured to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?

3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative requirements of the system reasonable given the staff and other resource requirements available?

4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

Court decisions suggest areas for action

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots and provide training for the officials who will apply those standards. Clear direction by regulation or statute on what records to use in evaluating provisional ballots could save time and effort and increase the reliability of the provisional voting system.

- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by administrative errors at the polling place.

- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

Assess each stage of the provisional voting process

Beyond the procedures suggested by court decisions, states should assess each stage of the provisional voting process. They can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process.

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot. Our recommendations for practices to help avoid error at the polling place include:

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.

- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.

- Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. Good practice for states should include guidelines to estimate the supply of provisional ballots needed at each polling place.

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.

- Research shows more provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA leaves this decision up to the states, EAC notes the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding whether or not to count the ballot. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots, are considered. Also, tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.

- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While a good practice might be for poll workers to direct the voter to the correct precinct, poll workers' advice is not always correct and the voter should be protected against administrative error.

- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating of a provisional ballot (see below).

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College.

- A good practice is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- A good practice is for the states to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

SUCCESSFUL PRACTICES FOR EACH STEP IN THE PROCESS

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system cause most voters to end up casting provisional ballots. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

EAC has examined each step of the provisional voting process to identify specific areas where the states should focus their attention. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

Step 1. Registration and Pre-Election Information for Voters

Providing clear and accurate information to voters before the election is important to the success of the provisional voting process. The more voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Good practices in this area would include:

- If states require identification at the time of registration, the kind of ID required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."
- The process to re-enfranchise felons should be clear and straightforward.
- State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

Step 2. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

- The layout and staffing of the polling place, particularly the multi-precinct polling place, are important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. A state statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.
- Voters should be able to find out why their provisional ballot wasn't counted. Voters should be given printed information explaining how to check to see if their ballot was counted. Because provisional ballots offer a fail-safe method of voting, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1 % of the voters in the district, Delaware at 6%. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
- To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain of custody requirements for clarity.

Step 3. Evaluating Voter Eligibility and Counting Provisional Ballots

State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. There may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot:

- A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. At least 11 states allow voters to provide ID or other information one to 13 days after voting.

- The signature match will also be able to be compared with motor vehicle records and other databases which are available to counties.

- More provisional ballots are counted in those states that verify ballots cast outside the correct precinct. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the district and local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.

- Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot counts so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.

- Ideally the voter would be directed to the correct precinct, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match", "wrong precinct," etc.). Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

Colorado Rejection Codes (Any ballot with a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.

RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as ID deficient, and did not provide ID at the time of voting.
RRD	(Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

Step 4. Verification of Provisional Ballots

States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.

- In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in a presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time for challenges.

- If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. States may want to provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election.

States should make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

Step 5. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will allow challenges filed by the provisional voter to be completed in a timely manner to ensure that the vote is counted for the elections in which the ballot was cast before the elections are certified.

- States should establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered. In some states the act of casting a provisional ballot can capture the voters contact information and allow them to be registered from that time forward for future elections.

Step 6. State Laws Governing Litigation over Provisional Voting

- States should prominently post and widely distribute Provisional Voting and Administrative Complaint procedures before, during, and after each election to ensure that voters know their provisional voting rights and what they should do if they believe their right to vote was denied.

- States should establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot.

Broader Considerations

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes.

- State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
- State laws or regulation should require an evaluation process for provisional ballots while protecting the names of those who voted provisionally.
- Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes. Nor is the system with the greatest number counted or with the fewest counted necessarily better because the evaluation process could be flawed.
- Variations in state law can make it difficult in defining what makes for a successful provisional voting system. There must be equal consideration for all voters.

CONCLUSION

The EAC recommends that states take the following action:

- Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
- Allowing the provisional ballot to be a procedure for a change of address for the voter or to register the voter for the next and future elections.
- Collect data systematically on the provisional voting process to enable ongoing evaluation of how well their voting procedures are working and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
  -- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
  -- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
  -- Measures of variance among jurisdictions.
  -- Number of poll workers trained in administration of provisional voting by polling place.
  -- Number of jurisdictions posting information on provisional voting in the polling place.
  -- Time required to evaluate ballots by jurisdiction.

Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

OVERVIEW OF RECOMMENDATIONS FOR SUCCESSFUL PRACTICES

The wide variation in the implementation of provisional voting among and particularly within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Self-evaluation of Provisional Voting -4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
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4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of sound practices should provide the starting point for a state's effort to improve its provisional voting system.

SUMMARY OF RECOMMENDATIONS FOR Sound PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a Quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

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- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Our research did not identify an optimum division of the five weeks available.

- The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- Best practice for the states is to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

Final observation

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention to reduce the inconsistencies noted in our analysis. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots ... To avoid post election disputes over provisional ballots-disputes that will diminish public confidence in the accuracy and legitimacy of the result-- well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones
are counted."26

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant re-canvassing.[27] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[28]
- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. 29 Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll

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26 The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

27 See *Washington State Republican Party v. King County Division* of *Records*, 103 P3d 725, 727-728 (Wash. 2004) 28 See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, NO.04-4177-CV-CRED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

29 Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 774 (6th Cir. 2004) workers may need appropriate training to understand their duty to give such voters a provisional ballot. 30

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and

. by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an 10 card with your photograph on it and this 10 card must be issued by a government agency. „31
2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[32]
3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

B. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, 10 requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.33 Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." 34 A state

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30 The Florida Democratic Party v. Hood, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

31 Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website. 32 The Century Foundation, op. cit.

33$_8$ Colo. Code Regs. § 1505-1, Rule 7.1. 34$_{2005}$ N.M. Laws 270 page no. 4-5.

statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required ... to photocopy official provisional ballots." 35 At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1 % of the voters in the district, Delaware at 6%.36 States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-ofcustody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. Public recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underlines the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration-as with all others concerning provisional voting-is that they be clear and thus not susceptible to post-election manipulation and litigation."37 Nonetheless, the *Panio* v. *Sutherland*[38] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

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35 Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

36 Connecticut: "Equal to or not less than 1 % of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j.Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

37 The Century Foundation, op. cit.

38 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante-Foley) Provisional Ballot Cases by State, July 19, 2005.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified 10 or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the 10 may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Oay. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks 10 on Election Oay to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with 10 rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide 10 or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their 10 by electronic means or by mail, as well as in person.[39]
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct. 40 While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. 41 Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

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39 In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. *25-1122(d)*. ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(cL(1) Florida: until 5:00 P.M. on the third day following the election. Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia-no later than 2 days after the election. GA ST § 21-2-417; 419. IIlinois- 2 days to submit additional information 10 III. Compo Stat. Ann. 5/18A-15(d); Indiana- in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (I); Maryland-until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey- until the close of business on the second day after the election 19:53C-3(i). Nevada- until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico-until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

40 See Andersen, op. cit, pgs. 23 - 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

41 Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[42]

<u>Colorado Reiection Codes (Anv ballot !:liven a reiection code shall not be counted):</u>

RFS (Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS (Rejection not signed) Provisional Ballot Affidavit not signed.
RIN (Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR (Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE (Rejection envelope empty) Provisional ballot envelope is empty.
RAB (Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV (Rejection based on ballot cast in early voting) Voter voted early.
RIP (Rejection based on incorrect party) Incorrect Party in Primary Election. RFE (Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC (Rejection elector not registered in county or State of Colorado) Noncounty or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID (Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days

[42] 8 CCR 1505-1, at 26.5.4, adopted august 4,2005. See also 1-2-509(3) C.R.S.

following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot.

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma[43] or the Baldridge Quality

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[43] Six Sigma is a measure of quality that strives for near perfection. Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects (driving towards six standard deviations between the mean and the nearest specification limit) in any process -- from manufacturing to transactional and from product to service.

process 44 to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
    -- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
    -- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report. -- Measures of variance among jurisdictions.
    -- Number of poll workers trained in administration of provisional voting by polling place.
    -- Number of jurisdictions posting information on provisional voting in the polling place.
    -- Time required to evaluate ballots by jurisdiction.

Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

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44 The Baldrige Criteria for Performance Excellence provide a systems perspective for understanding performance management. They reflect validated, leading-edge management practices against which an organization can measure itself. With their acceptance nationally and internationally as the model for performance excellence, the Criteria represent a common language for communication among organizations for sharing best practices. The Criteria are also the basis for the Malcolm Baldrige National Quality Award process.

Deliberative Process Privilege

DRAFT

Report to the

U. S. Election Assistance Commission

On

Best Practices to Improve Provisional Voting

Pursuant to the

HELP AMERICA VOTE ACT OF 2002

Public Law 107-252

November 23, 2005

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

Executive Summary

Please provide an Executive Summary to provide background and summarize the key recommendations.

Background of the Research

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning provisional voting, a sample survey of local election officials, and a statistical analysis of provisional voting in the 2004 election. Also consulted as a basis for these recommendations were other studies, notably the EAC's Election Day Survey.[1] (Recommended as Research Methodology description)

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.[2] The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that where the ballot must be cast in order to be counted.[3]

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, first-time voters who cannot provide identification, as required under HAVA, and voters who were

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[1] Appendix 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures and describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

[2] The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions. " See www.electioncenter.org .

[3] The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell, 387 F.3d565* (6th Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots. (The average of provisional ballots cast was 64.5% counted. A third category had to account for a significant amount over 64.5%. What was that category?)
- Perhaps another reason provisional ballots must be cast in the correct precinct in order to be counted is that local races are also important and that allowing provisional ballots to be counted by voters who cast them outside of the precinct and only counting the ballots for the upper ballot races for outside of the precinct can disenfranchise voters from participating in local races. This argument has been used by many legislatures and in court castes to require that provisional ballots must be cast in the correct precinct in order to be counted.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.[9] That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC should consider providing all states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning

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[9] Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's " 6-day time frame for processing the provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

(52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office. (the voter was registered, than the ballot counted, the voter did not have to present identification).

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- Voter registration databases provided information that reduced the number of provisional ballots counted.[12] In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.[13]
  - In experienced states, the disparity was even more pronounced; 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.[14]

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots. Perhaps it is the judges training or it is, in part, because of different laws.[15]

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[12] The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

[13] The Election Day Survey concluded that : "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

[14] This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

[15] For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly

measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology (what is meant by this statement) and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available. (Are polling places posting their provisional voting signs? Are election judges doing their jobs?)

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

Not knowing the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

Estimates of Votes Lost In 2000 Presidential Election

Votes Lost (Millions)	*Cause*
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

Table 1 Cal Tech – MIT Voting Technology Project Estimates

4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then,

This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.

- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.

- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

Need for Promulgation of Best Practices

Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. This is false. If they are registered (the voter registration database is checked as required by HAVA or restricted by state requirement) the provisional counts. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity

the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."[19]

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.[20] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.

- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[21] (does this mean that the state should provide poll workers training? Most provided by local election jurisdictions. Is the recommendation to deviate from current practice?)

- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [22] Recent legislation in Arizona indicates that HAVA's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot. [23]

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States

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[19] The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

[20] See *Washington State Republican Party v. King County Division of Records*, 103 P.3d 725, 727-728 (Wash. 2004)

[21] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

[22] *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

[23] *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [28] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[29]

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.[30] Seems like most states require training; do they have data on that? Florida's statutory training provisions among the strongest in the nation.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."[31] Nonetheless, the *Panio v. Sutherland*[32] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the

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[28] Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

[29] Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j.Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

[30] 10 Ill. Comp. Stat. Ann. 5/18A-10(b). Indiana requires that the precinct election board give the ballots to the Inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4

[31] The Century Foundation, op. cit.

[32] 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[36]

Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
RRD	(Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to

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[36] 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.

2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
   - -- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
   - -- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
   - -- Measures of variance among jurisdictions.
   - -- Number of poll workers trained in administration of provisional voting by polling place
   - -- Number of jurisdictions posting information on provisional voting in the polling place
   - -- Time required to evaluate ballots by jurisdiction

Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

Conclusion -- Research-based, continuing improvements for provisional voting are needed <u>(This section should be the first part of the document)</u>

The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:
1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

<u>(Should this section be put under a Research Methodology section at the beginning?)</u>
To answer those questions, the Eagleton-Moritz team undertook the following research efforts:
1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

Table 1
CATEGORIZATION OF STATES -- Old vs New

Old States	**New States**	**HAVA Exempt or NA**
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
26	**18**	**7**

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[38] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

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[38] "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf

Table 3

CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots

Out-of-Precinct	**In-Precinct Only**	**HAVA EXEMPT OR NA**
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado (after the court case)	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois (Not sure the law is that clear. Please check different counties did it differently.)	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

Voter Identification

We relied on Electionline studies, including the Voter Identification study[39] and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.[40] The five

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[39] This study can be found at: http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf

[40] In 2004, ElelctionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

Table 5
CATEGORIZATION OF STATES -- Ballot Evaluation Methods
States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis. ***No states have been italicized. Is this correct?***

Signature Match	**Data Match**	**Affidavit**	**Return with ID**	**NA**
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina*
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

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* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

Data Differences

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.
Please explain the 0/8022 discrepancy under North Carolina "differences" since you indicate the info was not updated from the database.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	53,698/26,092	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

ATTACHMENT 2 – Data

Table 1 -- Provisional Voting Basic Statistics

States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Alabama	Affidavit	0.10	28.00
Alaska	PV	7.20	97.00
Arizona	PV	3.66	73.00
Arkansas	PV	0.35	48.00
California	PV	3.96	74.00
Colorado	LPV	1.84	76.00
Connecticut	None	0.03	32.00
Delaware	None	0.01	6.00
District of Columbia	PV	3.51	71.00
Florida	PV	0.13	36.00
Georgia	None	0.12	30.00
Hawaii	None	0.01	7.00
Idaho	EDR	EDR	EDR
Illinois	None	0.42	51.00
Indiana	None	0.02	15.00
Iowa	PV	0.53	52.00
Kansas	PV	2.68	70.00
Kentucky	Affidavit	0.01	15.00
Louisiana	None	0.12	40.00
Maine	EDR	EDR	EDR
Maryland	PV	1.33	65.00
Massachusetts	None	0.08	23.00
Michigan	Affidavit	0.07	58.00
Minnesota	EDR	EDR	EDR
Mississippi	Affidavit		
Missouri	None	0.12	40.00
Montana	None	0.08	55.00
Nebraska	LPV	1.71	78.00
Nevada	None	0.29	40.00
New Hampshire	EDR	EDR	EDR
New Jersey	LPV	1.96	55.26
New Mexico	PV	1.16	57.00
New York	PV	3.27	40.30
North Carolina	PV	1.21	55.00
North Dakota	NR	NR	NR
Ohio	LPV	2.20	78.00
Oklahoma	None	0.01	8.00
Oregon	PV	0.39	85.00
Pennsylvania	None	0.45	49.00
Rhode Island	None	0.23	46.00
South Carolina	PV	0.20	65.00
South Dakota	None	0.02	12.00
Tennessee	None	0.14	38.00
Texas	Affidavit	0.10	21.00
Utah	None	2.00	70.00
Vermont	None	0.01	37.00
Virginia	PV	0.02	17.00
Washington	PV	2.44	80.00
West Virgina	PV	1.11	63.00
Wisconsin	EDR	0.00	32.00
States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Wyoming	EDR	0.01	25.00

When did Eagleton get the information for Missouri. Missouri enacted provisional voting in 2002 and it is likely it was in place for the November 2002 election Pre-HAVA.

Eagleton's PV, LPV, EDR notations are confusing. In the instance of Colorado, the LPV designation (in the PV Status row - HAVA column is incorrect.) In Colorado the voter did not have to vote in the precinct.

Table 2 -- Characteristics of State Provisional Voting Systems

States	Was there a Statewide DB in 2004?	Are Outside Precincts Counted in Presidental Elections?	Verification Method	What is the time line for counting PV ballots?	Is this Review process open?
Alabama	No	No	Check address & registration	7 days	unclear
Alaska	Yes	Yes	Signature	15 days	limited
Arizona	Yes	No	Check address & registration	10 days	unclear
Arkansas	No	Yes	Check address & registration	15 days	Unclear
California	No	Yes	Signature	28 days	yes
Colorado	No	Yes	Check address & registration	12 days	limited
Connecticut	Yes	No	Affidavit	6 days	unclear
Delaware	Yes	Yes	Affidavit	Until Completion	limited
D.C.	Yes	No	Check address & registration	*	limited
Florida	No	No	Signature	11 days	yes
Georgia	Yes	Yes	Affidavit	7 days	unclear
Hawaii	Yes	Yes	Affidavit	6 days	limited
Idaho	No	EDR	EDR	*	unclear
Illinois	No	Yes	Affidavit	14 days	unclear
Indiana	No	No	Bring ID later	13 days	yes
Iowa	No	No	Bring ID later	2 days	unclear
Kansas	No	Yes	Bring ID later	*	limited
Kentucky	Yes	No	Affidavit	3 days	unclear
Louisiana	Yes	Yes	DOB and Address	4 days	yes
Maine	No	EDR	EDR	*	unclear
Maryland	No	Yes	Bring ID later	*	unclear
Massachusetts	Yes	No	Affidavit	4 days	unclear
Michigan	Yes	No	Bring ID later	14 days	unclear
Minnesota	?	EDR	EDR	14 days	Unclear
Mississippi	No	No	Affidavit	*	yes
Missouri	No	No	Check address & registration	14 days	limited
Montana	No	No	Bring ID later	*	unclear
Nebraska	No	No	Affidavit	7 days	limited
Nevada	No	No	Affidavit	7 days	unclear
New Hampshire	No	EDR	EDR	*	unclear
New Jersey	No	No	Bring ID later	28 days	yes
New Mexico	Yes	Yes	Bring ID later	10 days	unclear
New York	No	No	Affidavit	10 days	yes
North Carolina	No	Yes	Varies	7 days	yes
North Dakota	NR	NR	NR	*	unclear
Ohio	No	No	Check address & registration	*	unclear
Oklahoma	Yes	No	Check address & registration	3 days	limited
Oregon	No	Yes	Signature	*	limited
Pennsylvania	No	Yes	Check address & registration	*	unclear
Rhode Island	No	Yes	Check address & registration	*	yes
South Carolina	Yes	No	Check address & registration	4 days	unclear
South Dakota	Yes	No	Affidavit	3 days	unclear
Tennessee	No	No	Affidavit	48 hours	unclear
Texas	No	No	Bring ID later	7 days	unclear
Utah	No	Yes	Bring ID later	*	unclear
Vermont	No	Yes	Affidavit	2 days	unclear

States	**Was there a Statewide DB in 2004?**	**Are Outside Precincts Counted in Presidental Elections?**	**Verification Method**	**What is the time line for counting PV ballots?**	**Is this Review process open?**
Virginia	No	No	Affidavit	7 days	limited
Washington	No	Yes	Check address & registration	*	yes
West Virgina	Yes	No	Check address & registration	30 days	unclear
Wisconsin	No	No	Bring ID later	*	unclear
Wyoming	No	No	Affidavit	*	unclear

* Data to come on timeline classifications for these remaing states.

[redacted]

Table 3 -- Information for Voters

Provided on State Elections Website?					
States	**PV Requirements**	**VID Requirements**	**Registration Verification**	**Precinct Verification**	**Notification of Voters**
Alabama	No	Yes	No	No	Phone
Alaska	No	Yes	No	Yes	Phone
Arizona	No	No	No	No	Counties
Arkansas	Yes	No	No	No	Counties
California	Yes	No	No	Yes	Counties
Colorado	Yes	Yes	No	No	Counties
Connecticut	Yes	Yes	No	No	Phone
Delaware	Yes	No	No	Yes	Website
D.C.	Yes	No	Yes	Yes	Website
Florida	No	Yes	No	No	Counties
Georgia	No	Yes	Yes	Yes	Counties
Hawaii	No	Yes	No	Yes	Phone
Idaho	EDR	Yes	No	No	EDR
Illinois	Yes	No	No	No	Website
Indiana	No	No	No	No	Phone
Iowa	Yes	Yes	No	No	Mail
Kansas	Yes	No	No	No	Counties
Kentucky	Yes	No	Yes	Yes	Website
Louisiana	Yes	No	No	Yes	Phone
Maine	EDR	Yes	No	Yes	EDR
Maryland	Yes	Yes	No	No	Website/Phone
MA	Yes	No	No	Yes	Phone
Michigan	Yes	Yes	Yes	Yes	Mail
Minnesota	EDR	Yes	No	Yes	EDR
Mississippi	No	No	No	No	Counties
Missouri	Yes	Yes	No	No	Phone
Montana	No	Yes	No	No	Mail
Nebraska	No	No	No	No	Website/Phone
Nevada	No	No	No	No	Website/Phone
New Hampshir	EDR	No	No	No	EDR
New Jersey	Yes	Yes	No	No	Website/Phone
New Mexico	Yes	Yes	No	No	Phone
New York	No	No	No	No	Mail
North Carolina	No	No	Yes	Yes	Website
North Dakota	NR	Yes	NR	No	NR
Ohio	Yes	Yes	No	No	Phone
Oklahoma	No	Yes	No	No	Phone
Oregon	No	No	No	No	Phone
Pennsylvania	Yes	Yes	No	No	Phone
Rhode Island	Yes	Yes	No	No	Website
South Carolina	Yes	Yes	Yes	No	Website
South Dakota	Yes	No	No	Yes	Mail
Tennessee	No	No	No	No	Mail
Texas	Yes	Yes	No	No	Mail
Utah	Yes	Yes	No	Yes	Phone
Vermont	No	Yes	No	Yes	Phone
Virginia	Yes	Yes	No	Yes	Phone
Washington	No	Yes	No	No	Counties
West Virgina	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

Table 4 -- Litigation and Statues

States	Litigation pre-2004 election?	Litigation post-2004 election?	Were clarifying PV regulations promulgated post election 2004?	Type of Clarifications
Alabama				
Alaska				
Arizona		Yes	Yes	Voter ID
Arkansas			Yes	Wrong precinct
California				
Colorado	Yes	Yes	Yes	Wrong precinct, timeline, counting
Connecticut				
Delaware				
D.C.				
Florida		Yes	Yes	Timeline, eligibility
Georgia			Yes	Voter ID
Hawaii				
Idaho				
Illinois				
Indiana			Yes	Voter ID, timeline, counting
Iowa				
Kansas				
Kentucky				
Louisiana			Yes	Counting
Maine				
Maryland				
Massachusetts				
Michigan		Yes		
Minnesota				
Mississippi				
Missouri				
Montana			Yes	Eligibility
Nebraska				
Nevada				
New Hampshire				
New Jersey				
New Mexico			Yes	Counting
New York		Yes		
North Carolina		Yes	Yes	Wrong precinct, counting
North Dakota				
Ohio	Yes	Yes		
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota				
Tennessee				
Texas				
Utah				

States	**Litigation pre-2004 election?**	**Litigation post-2004 election?**	**Were clarifying PV regulations promulgated post election 2004?**	**Type of Clarifications**
Vermont				
Virginia			Yes	Timeline, voter notification
Washington	Yes	Yes	Yes	Voter ID, timeline, counting
West Virgina				
Wisconsin				
Wyoming				

Aletha Barrington/CONTRACTOR/EAC/GOV
05/04/2006 04:36 PM

To [redacted]
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Conference Call/ Eagleton Institute

Good afternoon everyone,

This is to inform you of a time set-up for the conference call on May 11, 2006 regarding Eagleton Institute/Voter Identification Research Project: it will be at 11:30 am, if everyone is available for this time then its a go, if not please contact me at your earliest convenience.

Thanks!

Aletha Barrington
Contracts Assistant
U.S. Election Assistance Commission
(202) 566-2209 (office)
(202) 566-3128 (fax)

"Adam Berinsky"
[redacted]
05/03/2006 05:31 PM

To [redacted]
cc
bcc
Subject Re: Review of EAC research on Voter Identification

History: This message has been replied to.

I just got your phone message. I will still do the review, but I should note that I wont be able to do a full 90 minute phone call on the 11th -- perhaps we could schedule 30 minutes or so for me to be on the phone call.

At 05:36 PM 5/1/2006, you wrote:

> Dr. Berinsky-
>
> On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paperâ€™s findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:
>
> ℜ• The research methodology which was used to support the paperâ€™s conclusions
>
> ℜ• The specific statistical applications which were used to analyze the data and arrive at various conclusions
>
> If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.
>
> On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagletonâ€™s peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EACâ€™s Board of Advisors and Standards Boards in late May.
>
> While we are unable to offer financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Adam J. Berinsky
Associate Professor
Department of Political Science
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139 E53-459
Tel: (617) 253-8190
Fax: (617) 258-6164
[redacted]
Web Page: http://web.mit.edu/berinsky/www/

"Tom O'neill"
[redacted]>
05/03/2006 03:29 PM

To [redacted]
cc
bcc
Subject May 11 teleconference

Karen,

Do you have a time for the May 11 teleconference? We're working to arrange the participation of members of our Peer Review Group and that is the key missing piece of information.

Thanks,

Tom O'Neill

Juliet E. Thompson-Hodgkins/EAC/GOV

05/01/2006 04:49 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: E-mail to Voter ID peer reviewers

I am concerned about the statement that EAC policy precludes us paying them. It is an issue of correctly soliciting and entering into a contract for the procurement of services. Perhaps there is a better way to phrase this, or is it even necessary

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

05/01/2006 02:58 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV
05/01/2006 04:07 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: E-mail to Voter ID peer reviewers

Then we are good to good

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 03:03 PM
To: Thomas Wilkey
Cc: Juliet Thompson-Hodgkins
Subject: Re: E-mail to Voter ID peer reviewers

It's my understanding that Julie thinks we are " good to go" as long as we don't pay them.

Correct?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc
Subject Re: E-mail to Voter ID peer reviewers

Did we resolve the contact issues on this?

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 02:58 PM
To: Thomas Wilkey; Juliet Thompson-Hodgkins
Subject: E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
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While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Juliet E. Thompson-Hodgkins/EAC/GOV
05/01/2006 03:56 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: E-mail to Voter ID peer reviewers

As long as we don't pay them, there is no contract issue.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"Tom O'neill"
[redacted]t>
05/01/2006 02:10 PM

To [redacted]
cc
bcc
Subject Hamilton Crown Plaza

History: This message has been replied to.

Karen,

I tried to reserve a room at the Hamilton Crown Plaza for the night of May 23, but found that nothing was available. Has EAC reserved a block of room for that evening? If so, can 2 of those be made available to the Rutgers-Moritz team in connection with our presentation to the advisory boards?

Tom O'Neill

"Thomas O'Neill"
[redacted]>
06/16/2006 08:49 AM

To [redacted]
cc
bcc
Subject Prov Voting and Voter ID Reports

History: This message has been replied to.

Karen,

Could you please give me your reading of the status of a response to our letter last week that raised some issues for resolution by the Commission on the completion of our work during the final few weeks of the contract period. The Team needs to know how to proceed during the remaining 2 weeks of the project.

Thanks,

Tom O'Neill

Thomas R. Wilkey/EAC/GOV
06/15/2006 01:14 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Eagleton letter in response to the Chairman

History: This message has been replied to.

We need to discuss

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
[redacted]
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
06/15/2006 11:26 AM

To [redacted], Bert A. Benavides/EAC/GOV@EAC
cc
Subject Eagleton letter in response to the Chairman

Tom-

Attached is a letter which I have drafted for you summarizing the Commissioner's discussion on the Eagleton contract and which will respond to John Weingart's letter to the Chairman.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005

tel:202-566-3123 Wilkey Eagleton close out letter.doc

Deliberative Process Privilege

June 15, 2006

John Weingart:
Eagleton Institute of Politics
Rutgers University

Dear John:

During its bi-weekly meeting the four EAC Commissioners met, discussed and reviewed possible next steps with the provisional voting and voter identification studies as well as the Eagleton contract which is scheduled to conclude on June 30, 2006.

The four Commissioners were in agreement that Eagleton's work on the EAC contract should conclude, as scheduled, by June 30, 2006. In preparation for this conclusion the Commissioners have asked that the comments and suggestions which were noted during the EAC's recent Board of Advisors and Standards Boards meeting (and were described in your June xxx letter to Chairman DeGregorio) be included in the final report on provisional which Eagleton will deliver to the EAC on or about June 30, 2006. The Commissioners have determined that they will take this final report and, from it, develop guidance and best practice recommendations that will be presented to the Board of Advisors and Standards Boards for further review.

The EAC Commissioners have also reviewed and considered next steps with the voter identification draft report which Eagleton has prepared. While the final disposition of the results and findings of this study, on the part of the EAC, are still unclear, the Commissioners have asked that the final report of this study also be prepared and submitted to the EAC not later than June 30, 2006.

We look forward to receiving these reports. On behalf of the EAC thank you for the considerable time and energy which the Eagleton/Moritz team has devoted to these critical election issues during the last eighteen months.

Sincerely.

Thomas Wilkey

"Thomas O'Neill"
[redacted]>
06/01/2006 03:55 PM

To [redacted]
cc
bcc
Subject Next steps

History: This message has been replied to and forwarded.

Karen,

While we were in Washington for the meetings of the advisory boards, you told me the Commissioners were to meet today, June 1, and would reconsider the Voter ID paper. As you can, no doubt, imagine, we are all interested in learning the outcome of that discussion.

We also look forward to your guidance concerning the next steps to complete the work on the Provisional Voting report that we presented to the advisory boards last week.

Tom O'Neill

"Tom O'neill"
[redacted]
05/17/2006 04:57 PM

To [redacted]
cc [redacted]
bcc
Subject RE: Presentations at the EAC Governing Boards

History: This message has been replied to.

Karen, I don't have the capacity to produce a PDF copy of the report. (I thought we discussed this last week and you agreed that the word document would suffice.) Someone at Eagleton could surely covert the DOC file to PDF, but since I just read your email now (4:50), we could not provide a PDF copy today. Please let me know if you want me to pursue this tomorrow.

Thanks for the schedule below. But it raises a question. Earlier this week you told me that the Commissioners asked that we limit our presentation to 10 minutes and leave the rest of the time for questions and comments. As I noted in my response, condensing our reports to 10 minutes poses a challenge. Is the 10 minute limit no longer operative?

Tom O'Neill

-----Original Message-----
From: [redacted]
Sent: Wednesday, May 17, 2006 12:30 PM
To: [redacted]
Cc: [redacted]
Subject: Re:Presentations at the EAC Governing Boards

Tom-

Look forward to getting a PDF copy of the final versions of the Voter ID paper and the Provisional Voting Paper by COB today

Here is the timing breakdown for next week's presentations:

EAC Standards Board (137 members)

Tuesday, May 23, 2006
2:30-4:00 PM
Hamilton Ballroom
Provisional Voting
45 minutes for presentation
45 minutes for questions and answers

Wednesday, May 24, 2006
1:40-2:45 PM
Hamilton Ballroom

Voter Identification
40 minutes for presentation
25 minutes for questions and answers

EAC Board of Advisors (36 members)

Wednesday, May 24, 2006
8:30-9:15 AM
Lafayette Park Ballroom
Provisional Voting
20 minutes for presentation
25 minutes questions and answers

Wednesday, May 24, 2006
11:00-11:55 PM
Lafayette Ballroom
Voter Identification
30 minutes presentation
25 minutes questions and answers

EAC General Counsel Julie Thompson- Hodgkins will facilitate/moderate all of your sessions

Will be in touch tomorrow after the Commissioners have met.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]
05/17/2006 09:25 AM

To [redacted]
cc [redacted]
bcc [redacted]
Subject Voter ID Report and Appendices

History: This message has been replied to and forwarded.

Karen,

Attached for review by the Commissioners is the Voter ID Report and its appendices. The appendices are lengthy, but I believe Appendix A should be included in the report sent to the Advisory Boards for review.

Thanks for your forbearance.

Tom O'Neill

Appendices517.doc VoterIDReport05170910.doc

Appendices

a. Summary of Voter ID Requirements by State

b. Summary of case law on Voter ID issues

c. Vercellotti --Analysis of Effects of Voter ID Requirements on Turnout

d. Indexed database of major articles on Voter ID Requirements and related topics

e. Compendium of states' legislation, procedures, and litigation (available as an electronic document)

Appendix A
Summary of Voter Identification Requirements By State

Prepared by
Sara A. Sampson, Reference Librarian,
The Ohio State University Moritz College of Law.

Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification: (1) A current valid photo identification. (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following: a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification. b. A valid United States passport. c. A valid Alabama hunting or fishing license. d. A valid Alabama permit to carry a pistol or revolver. e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States. f. A valid United States military identification card. g. A certified copy of the elector's birth certificate. h. A valid Social Security card. i. Certified naturalization documentation. j. A certified copy of court records showing adoption or name change. k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card"). (c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b). (e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law. (f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs. Effective Date: June 24, 2003	Ala. Code § 17-11A-1
Alaska	Provide ID	(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including (1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or (2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this	Alaska Stat. § 15.15.225

		paragraph must show the name and current address of the voter. (b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under AS 15.07.050, and did not provide identification as required in AS 15.07.060. (c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot. effective June 17, 2003	
Arizona	Provide ID	B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot: 1. The person shall present either one of the following: (a) A current form of identification that bears a photograph of the person and the name of the person. (b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person. 2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584. Effective Dec. 1, 2003	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	7-5-305. Requirements. (a) Before a person is permitted to vote, the election official shall: (1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list; (2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth; (3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list; (4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate; (5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct. (B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files. (C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct; (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files; (7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and	Arkansas Code Annotated § 7-5-305

		(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card. (B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification. (ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney. (iii) The prosecuting attorney may investigate possible voter fraud; and (9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the preson is a disabled voter and presents himself or herself to vote. Effective: July 16, 2003	
California	Sign Name	Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article. (Enacted in 1994, no amendments since)	Cal. Elec. Code § 14216
Colorado	Provide ID	(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in <u>section 1-1-104(19.5)</u>, write his or her name and address on the signature card, and give the signature card to one of the election judges, * * * (4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title. (19.5)(a) "Identification" means: (I) A valid Colorado driver's license; (II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.; (III) A valid United States passport; (IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state; (V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States; (VI) A valid United States military identification card with a photograph of the eligible elector; (VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector; (VIII) A valid medicare or medicaid card issued by the United States health care	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

		financing administration; (IX) A certified copy of a birth certificate for the elector issued in the United States; or (X) Certified documentation of naturalization. (b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado. Effective 5/28/2004	
Connecticut	Provide ID	(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate. Effective May 10., 2004	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record. Effective: July 9, 2002	15 Del. Code § 4937
D.C.	Sign Name	(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection. (2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the	D.C. Code § 1-1001.07

		polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection. (3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records. (Effective April 3, 2001)(not added as part of 2005 amendment)	
Florida	Photo ID	101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector. (2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49. **97.0535** (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired: 1. Florida driver's license. 2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles. 3. United States passport. 4. Employee badge or identification. 5. Buyer's club identification. 6. Debit or credit card. 7. Military identification. 8. Student identification. 9. Retirement center identification. 10. Neighborhood association identification. 11. Entertainment identification. 12. Public assistance identification. (b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant: 1. Utility bill.	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535

		2. Bank statement. 3. Government check. 4. Paycheck. 5. Other government document (excluding voter identification card). Version effective 1/1/2005-12/31/2005	
Georgia	Provide ID	(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following: (1) A valid Georgia driver's license; (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification; (3) A valid United States passport; (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state; (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business; (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; (7) A valid Georgia license to carry a pistol or revolver; (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States; (9) A valid United States military identification card; (10) A certified copy of the elector's birth certificate; (11) A valid social security card; (12) Certified naturalization documentation; (13) A certified copy of court records showing adoption, name, or sex change; (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector; (15) A bank statement, or a legible copy thereof, showing the name and address of the elector; (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or (17) A government document, or a legible copy thereof, showing the name and address of the elector. (b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement." effective June, 2003	Ga. Code. Ann. § 21-2-417

Hawaii	Photo ID	(b) The voter shall present valid identification to the official in charge of the pollbook. ***Do I Need an I.D. to Vote on Election Day?*** **Yes.** Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification. From the 2004 version of the administrative code. **§ 11-136 Poll book, identification, voting.** Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person. After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. Last amended 2003.	Haw. Code. R. § 2-51-80 – (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b) Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix HRS 11-136
Idaho	Sign Name	(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book. (2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein. (5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. (Last amended in 1972)	Id. St. §34-1106
Illinois	Give Name	Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he	10 Ill. Comp. Stat. 5/17-9

		shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.	
Indiana	Sign Name		West's Annotated Indiana Code § 3-11-8-25
Iowa	Sign Name	1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form: VOTER'S DECLARATION OF ELIGIBILITY I do solemnly swear or affirm that I am a resident of the .... precinct, ... ward or township, city of ...., county of ...., Iowa. I am a registered voter. I have not voted and will not vote in any other precinct in said election. I understand that any false statement in this declaration is a criminal offense punishable as provided by law. ____________________ Signature of Voter ____________________ Address ____________________ Telephone Approved:	Iowa Code § 49.77

		______________________________ Board Member 2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials. 3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner. A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote. (From 2004 version of Iowa Annotated Code; effective January 1, 1995)	
Kansas	Sign Name	(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention. (Approved April 14, 2004, 2004 Kansas Laws Ch. 93)	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	117.227 Confirmation of voter's identity Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification. Effective: 7/15/02 31 KAR 4:010. Voter identification cards. Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.	Ky Rev. Stat. Ann. 117.227 31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	A. Identification of voters. (1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place. (2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant	La. Rev. Stat. Ann. 18:562

		shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565. Effective: 1/1/2002	
Maine	Give Name	The voting procedure is as follows. 1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice. (In effect at time of 2003 amendment: 2003, c. 584, § 9)	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	10-310. (a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall: (1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot; (2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or (ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article; (3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register; (4) verify the address of the voter's residence; (5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and (6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.	Md. Elec. Law § 10-310
Mass.	Give Name	Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited. Last amended in 1981	Mass. Ann. Laws 54 § 76
		(5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).	950 Mass. Code Regs. 52.03
Michigan	Sign Name	(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state	Mich. Comp. Laws Ann. §

		identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727. (2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector. The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies. (Effective March 31, 1997)	168.523
Minnesota	Sign Name	(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not	Minn. Stat. § 204C.10

		more than $10,000, or both." (b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth. (c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest. (Effective January 1, 2004)	
Mississippi	Sign Name	* * * When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance. (Effective January 1, 1987)	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list: (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state; (2) Identification issued by the United States government or agency thereof; (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri; (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; (5) Driver's license or state identification card issued by another state; or (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose. (Last amended in 2002)	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address. (From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [Unrelated section was amended in 2005])	Mont. Code. Ann. §13-13-114(1)(a)
Nebraska	Sign Name	(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document. (Last amended in 2003) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter. (Last updated in 2003)	Neb. Rev. Stat. § 32-913 Neb. Rev. Stat. § 32-914
Nevada	Match Sig.	1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2. 2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are: (a) The card issued to the voter at the time he registered to vote; (b) A driver's license; (c) An identification card issued by the Department of Motor Vehicles; (d) A military identification card; or	Nev. Rev. Stat.§ 293.277

		(c) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture. Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers. b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery. c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5). Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

		case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list. E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot. G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster. (From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)	(Recompiled as §1-12-7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)
New York	Match Sig.	1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith. 2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election. 3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature. 4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the	N.Y. Law § 8-304 (McKinney)

		space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record. 5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same Last Amended 1986	
North Carolina	Give Name	(a) Checking Registration.--A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook. 1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address. (From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark. The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot. (Effective at time of last update, 1992 H 182, eff. 4-9-93)	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry. (Last amended in 1990) Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours. (Last amended in 1990)	Okla. Stat. Ann. tit. 26, § 7-114 Okla. Stat. Ann. tit. 26, § 7-117
Oregon	Match Sig.	All elections in Oregon are Vote by Mail. An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity (http://www.uhavavote.org/votingguide/votebymail.html) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register. (In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))	
Rhode Island	Give Name	(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form: BALLOT APPLICATION (Poll List) Senatorial District ____________________ Representative District _____________ Voting District _________________________ Election Date ______________________________________ I hereby certify that I am a registered and qualified elector in the above voting district of City of and hereby make application for ballots to be voted at this election. ____ (Signature of Voter) ____ (Residence Address) Number Approved _________________________________ (Supervisor of Election)	R.I. Gen. Laws § 17-19-24

		(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time. (Last amended 2004, Current through January 2005 Session)	
South Carolina	Photo ID	**§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.** When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5- 125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers. Last amended: 1968	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either: (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or	S.D. Codified Laws § 12-18-6.1

		technical school, located within the State of South Dakota. Last amended March 2004	
Tennessee	Provide ID	Identification of eligible voters (a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet. (2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists: (A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar; (B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list; (C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and (D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission. Last amended 2003	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place. (Last amended in 1997)	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges. (b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district. (3) If the election judge determines that the voter is registered: (a) the election judge in charge of the official register shall: (i) write the ballot number opposite the name of the voter in the official register; and	Utah Code Ann. § 20A-3-104

		(ii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter's name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) hand the voter a ballot; and (iv) allow the voter to enter the voting booth. (In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)	
Vermont	Give Name	Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and: (1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting. (2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting (Last amended in 2003)	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him. B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business. If the voter's name is found on the pollbook, if he presents one of the forms of	Va. Code. Ann.

		identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement. (Version in effect as of 2004- effective 4/12/2004)	
Washington	Sign Name	29A.44.201. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. (In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004) 29A.44.210. Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter. The precinct election officers shall then record the voter's name. Effective date: July 1, 2004	Wash. Rev. Code § 29A.44.201 & 29A.44.210
West Virginia	Match Sig.	(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon. * * * (c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the	W. Va. Code § 3-1-34 (a)

		election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter. (In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)	
Wisconsin	Give Name	6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number. (In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)	Wis. Stat. § 6.79
Wyoming	Give Name	(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22- 15-109, no identification shall be required when: (i) Voting in person or by mail after having registered in person; or (ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election. (In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)	Wyo. Stat. Ann. § 22-3-118

APPENDIX B –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:
Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
    - 14th Amendment EPC: no classification (applied strict scrutiny)
    - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
        - Compelling interests: preventing voter fraud (deemed compelling)
        - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
        - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
    - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
    - Substantive due process and equal protection
        - No improper discrimination

    - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
    - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
    - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
    - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
    - Substantive due process: ruled that internal use of SS# not a burden
    - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
    - P&I, Article IV: does not protect in-state citizens
    - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
    - VRA: ruled that race was not made a "qualification" for voting
    - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
    - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
    - VRA: ruled that it was not a "test or device" because it applied equally
    - 15th Amendment: same reasons

<u>Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:</u>

***American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

<u>Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:</u>

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot." 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[1]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[1] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[2]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[3] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[2] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[3] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[4] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[4] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

Appendix C

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University
May 16, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen turnout among those eligible to vote. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater based on specific types of requirements. Critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card, such as a driver's license. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. This report draws from two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (10 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[5] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[5] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I also tested the array of minimum identification requirements to assess whether they posed increasing levels of demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[6]

Analysis of aggregate data

If one treats maximum voter identification requirements as a continuous variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter

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[6] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

identification requirements (r = -.30, p < .05). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant (r= -.20, p = .16). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.2 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, I opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.[7]

Voter identification requirements alone do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county.

I coded the voter identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus I added a variable to reflect the number of days between each state's registration deadline and the election.[8]

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[7] Treating maximum voter identification requirements as a continuous variable yielded results in which voter identification requirements were negatively related to aggregate turnout. Those results can be found in Table A-1 in the Appendix to this report.

[8] For states that had Election Day registration or no registration requirement (North Dakota), I assigned a value of zero to this variable.

Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the median household income for 2002 in each county.[9]

I estimated a series of random effects models to account for the likelihood that data from counties were correlated within each state (for further explanation of random effects and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[10] I allowed the median income variable to have both fixed and random effects in each state to take into account variation in the cost of living in each state. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, two of the four requirements had a small and negative effect on turnout in 2004: matching one's signature and providing a non-photo identification. Taking into account the reference variable of stating one's name, the results indicate that turnout was lower in states that required signature matches or a non-photo identification than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Two contextual factors -- whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate-- increased voter turnout. The time between the closing date for registration and the election had a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income had positive effects on turnout. The percentage of African-Americans in the county did not have a significant effect.

The effects of the minimum voter identification requirements were non-existent. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to have a negative effect on turnout, as did the number of days between the closing date for registration and the election.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2),

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[9] To bring the income figures into a scale comparable to those of the other variables, I used the natural log of median household income.

[10] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

showed no significant improvement by including the interactions ($p > 0.05$). I report the coefficients for the models with the interactions in the Appendix in tables A-2 and A-3.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the identification requirements for voting vary, so does turnout. Specifically, in terms of the maximum requirements, the results suggest that requiring a signature match or non-photo identification is negatively related to turnout compared to requiring that a voter state his or her name. But the analysis showed that adding interactions between identification requirements and the percentage of the county that was African-American or Hispanic did not improve the fit of the model to the data.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[11] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[12] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[13] As in the analysis of aggregate data, I coded the voter

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[11] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[12] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

[13] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown

identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.[14]

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less.[15] At the individual level, I controlled for gender, household income, and dummy variables for race/ethnicity, age and education. In terms of race and ethnicity, I created dummy variables to represent whether a voter was Black/non-Hispanic, Hispanic, or Asian (with white/non-Hispanic/other voters as the omitted category for reference purposes). I separated education into five dummy variables: less than high school, high school diploma, some college, college graduate, and graduate training. I omitted the "less than high school" variable from the model for reference purposes. Regarding age, I created four dummy variables to represent 18 to 24 years of age, 29 to 44, 45 to 64, and 65 years and older. I omitted the 18-to-24 category as the reference variable in the model.

Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

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that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[14] Earlier versions of this paper included an individual-level analysis that included the five maximum voter identification requirements combined into a continuous variable. The results of that analysis, which found that voter identification requirements had a negative relationship with turnout, can be found in table A-4 in the Appendix.

[15] Given that the individual-level analysis focused on registered voters (as opposed to the citizen voting-age population in the aggregate analysis), I did not include the closing date for registration as a predictor of turnout in the individual-level analysis.

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 3 here]

The two models in Table 3 use either the maximum or minimum voter identification requirements in each state. The two models generate similar results. In each model, three of the voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. In other words, compared to states that require voters only to state their names, the requirements to sign one's name, provide a non-photo identification, photo identification in the maximum requirements or affidavit in the minimum requires exert a negative influence on turnout.

Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had finished high school. Respondents who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[16] I calculated the probabilities taking into account both maximum and minimum requirements.

[Table 4 here]

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability appear to decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[17] In terms of the

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[16] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[17] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of

minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter identification requirements. But incorporating dummy variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, I divided the sample into sub-samples and re-ran the probit models.

[Table 5 here]

The effects of voter identification requirements were similar for white voters compared to the entire sample, which was not surprising given that white voters comprised 81 percent of the sample. Voters in states where the maximum requirement involved signing one's name, providing a non-photo identification or photo identification were less likely to vote than those in a state that required voters to give their names. Taking into consideration the minimum requirements, this was true only for voters in states that require a non-photo identification or an affidavit. White voters in photo identification states were 3.7 percent less likely to vote than were white voters in states where respondents gave their names. The difference in probability was 4.4 percent for voters in states where an affidavit was the minimum requirement.

Voter identification requirements also influenced turnout among Black voters, but to a lesser extent relative to white voters.

[Table 6 here]

Of the maximum voter identification requirements, only the non-photo identification requirement reduced turnout compared to turnout in states that required voters to state their names. The predicted probability of voting was 5.7 percent lower for Black respondents in states that required non-photo identification. In terms of age, only African-Americans age 65 and older were more likely to vote than respondents in the 18 to 24 referent group. Respondents in all levels of education were more likely to vote than respondents without a high school diploma. Gender, income, living in a battleground state, being a part of the workforce and having been born in the United States also were positive predictors. Recent mobility tended to lower the probability of voting. None of the minimum identification requirements had a significant effect on voting, while most of the remaining variables had effects similar to those in the maximum requirement model.

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all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

Hispanic voters also were less likely to vote in states that required non-photo identification as opposed to stating one's name.

[Table 7 here]

Using the coefficients from Table 7 to calculate predicted probabilities, for both the maximum and minimum requirements, Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. Hispanic voters ages 45 to 64 and 65 and over were more likely to vote than their 18-to-24-year-old counterparts. Education and income also were positive predictors of voting. Interestingly, being a native-born citizen lowered the probability of voting, while native-born citizenship was a positive predictor for African-American voters and was not a predictor at all for white voters. It may be that naturalized citizens of Hispanic descent are more conscious of the value of voting rights than other groups.

Varying voter identification requirements influenced Asian-American voters as well. As with Hispanic and Black voters, Asian-American voters were less likely to turn out in states with non-photo identification requirements than in states where voters gave their names.

[Table 8 here]

Using the probit coefficients to calculate predicted probabilities, Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement. Asian-American voters also were 2.2 percent less likely to vote when signatures were the maximum requirement compared to stating one's name.

In terms of other predictors, there were no significant differences in terms of age or income. In contrast to Hispanic voters, where one was a naturalized or natural-born citizen did not affect the probability of voting. Those with high school or college diplomas or graduate training were more likely to turn out than those with less than a high school diploma. Women and married voters also were more likely to turn out than men and voters who were note married.

Discussion and conclusion

The results presented here provide evidence that as voter identification requirements vary, voter turnout does as well. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

In the aggregate data, requirements that voters match signatures on file, provide a non-photo identification or photo identification had negative effects on turnout compared to requiring that voters state their names. Interactions with specific groups – African-Americans and Hispanics – did not improve the fit of the aggregate data to the models. But differences emerged among specific groups in the individual-level data. The signature, non-photo identification and photo identification requirements all had negative effects compared to the requirement that voters simply state their names. These effects translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For

example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters (the gap widened to 3.7 percent for white voters when comparing photo identification to simply stating one's name).

That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements. This begs the question as to why photo identification requirements did not have a greater influence in 2004. It may have been due to the fact that photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[18] Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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[18] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using the November 2004 Current Population Survey data and voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Of all of the voter identification requirements, only requiring signatures or matching signatures had a significant effect on whether a respondent said he or she was registered to vote in 2004. In each instance the effect was negative.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Leighley, Jan E. and Arnold Vedlitz. (1999). Race, ethnicity, and political participation: Competing models and contrasting explanations. *The Journal of Politics*, 61(4):1092-1114.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

U.S. Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch,* Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.2 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum and minimum voter identification requirements

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	-1.34**	0.14	-1.36**	0.4
Sign Name	-0.01	0.012	0.002	0.02
Match Signature	-0.03*	0.014	-0.001	0.02
Non-photo ID	-0.04**	0.013	-0.01	0.02
Photo Identification	-0.02	0.019	----	----
Affidavit	----	----	-0.01	0.02
Battleground State	0.04**	0.01	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01	0.04*	0.02
Registration Closing Date	-0.002**	0.0005	-0.003**	0.001
% African-American	0.02	0.01	0.02	0.01
% Hispanic	-0.05**	0.01	-0.05**	0.01
% Age 65 or older	0.82**	0.03	0.82**	0.03
Median Household Income	0.18**	0.01	0.18**	0.01
-2 Log Likelihood	-8953.8		-8946.9	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (one-tailed tests)

Table 3. Probit model of voter turnout.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.11*	0.05	-0.08*	0.04
Match signature	-0.04	0.05	-0.03	0.05
Non-photo ID	-0.16**	0.06	-0.15**	0.05
Photo ID	-0.17**	0.07	----	----
Affidavit	----	----	-0.23**	0.06
Hispanic	-0.08	0.05	-0.08	0.05
African-American	0.24**	0.04	0.24**	0.04
Asian-American	-0.37**	0.07	-0.38**	0.07
Age 25-44	0.004	0.02	0.003	0.02
Age 45-64	0.26**	0.03	0.26**	0.03
Age65+	0.43**	0.03	0.43**	0.03
High School	0.31**	0.02	0.31**	0.02
Some college	0.57**	0.03	0.57**	0.03
College	0.88**	0.04	0.88**	0.04
Graduate School	0.98**	0.05	0.98**	0.05
Household income	0.03**	0.003	0.03**	0.003
Married	0.23**	0.02	0.23**	0.02
Female	0.10**	0.01	0.10**	0.01
Battleground state	0.17**	0.04	0.18**	0.04
Competitive race	0.05	0.06	0.05	0.05
Employed	0.05	0.05	0.05	0.05
Member of workforce	-0.05	0.05	-0.05	0.05
Native-born citizen	0.02	0.04	0.02	0.04
Moved within past 6 months	-0.29**	0.03	-0.29**	0.03
Constant	-0.09	0.10	-0.09	0.09
Pseudo-R-Squared	0.09		0.10	

Notes: N = 54,973 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 4. Predicted probability of voter turnout – full model

	Maximum requirement	**Minimum requirement**
State name	0.917	0.915
Sign name	0.899	0.902
Match signature	(N.S.)	(N.S.)
Non-photo ID	0.890	0.890
Photo ID	0.888	----
Affidavit	----	0.875
Total difference from "state name" to "photo identification" or "affidavit"	0.029	0.040
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Probit model of turnout for White voters.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.10*	0.05	-0.07	0.04
Match signature	-0.04	0.05	-0.01	0.06
Non-photo ID	-0.14**	0.06	-0.14**	0.06
Photo ID	-0.22**	0.08	----	----
Affidavit	----	----	-0.26**	0.05
Age 25-44	-0.01	0.03	-0.01	0.03
Age 45-64	0.25**	0.03	0.25**	0.03
Age65+	0.44**	0.04	0.44**	0.04
High School	0.36**	0.03	0.36**	0.03
Some college	0.64**	0.03	0.64**	0.03
College	0.95**	0.04	0.96**	0.04
Graduate School	1.05**	0.05	1.05**	0.05
Household income	0.03**	0.004	0.03**	0.003
Married	0.27**	0.02	0.27**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.16**	0.04	0.16**	0.04
Competitive race	0.07	0.07	0.07	0.06
Employed	0.08	0.05	0.08	0.05
Member of workforce	0.0003	0.05	0.003	0.05
Native-born citizen	0.08	0.08	0.08	0.08
Moved within past 6 months	-0.28**	0.03	-0.28**	0.03
Constant	-0.23*	0.11	-0.24**	0.10
Pseudo-R-Squared	.10		.10	

Notes: N = 44,760 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 6. Probit model of turnout for African-American voters.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.13	0.09	-0.08	0.13
Match signature	-0.05	0.10	-0.17	0.13
Non-photo ID	-0.24**	0.07	-0.14	0.12
Photo ID	-0.10	0.12	----	----
Affidavit	----	----	-0.05	0.19
Age 25-44	-0.004	0.09	-0.004	0.09
Age 45-64	0.12	0.09	0.13	0.09
Age65+	0.30**	0.12	0.31**	0.12
High School	0.24**	0.06	0.25**	0.06
Some college	0.40**	0.07	0.40**	0.07
College	0.69**	0.08	0.68**	0.08
Graduate School	0.99**	0.19	0.98**	0.19
Household income	0.04**	0.01	0.05**	0.008
Married	0.11	0.07	0.11	0.07
Female	0.14**	0.04	0.14**	0.04
Battleground state	0.13*	0.07	0.21**	0.08
Competitive race	-0.10	0.07	-0.16	0.10
Employed	-0.09	0.11	-0.09	0.10
Member of workforce	-0.32**	0.12	-0.31**	0.11
Native-born citizen	0.31**	0.11	0.28**	0.12
Moved within past 6 months	-0.32**	0.06	-0.32**	0.06
Constant	0.16	0.18	0.12	0.17
Pseudo-R-Squared	0.09		0.09	

Notes: N = 5,013 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 7. Probit model of turnout for Hispanic voters.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.20	0.20	-0.19	0.11
Match signature	-0.12	0.20	-0.18	0.12
Non-photo ID	-0.40*	0.20	-0.38**	0.13
Photo ID	-0.13	0.23	----	----
Affidavit	----	----	-0.25	0.16
Age 25-44	0.11	0.09	0.11	0.09
Age 45-64	0.35**	0.10	0.36**	0.10
Age65+	0.38**	0.11	0.40**	0.11
High School	0.18**	0.08	0.19*	0.08
Some college	0.46**	0.07	0.46**	0.07
College	0.63**	0.11	0.64**	0.11
Graduate School	0.72**	0.13	0.73**	0.13
Household income	0.03**	0.01	0.03**	0.01
Married	0.05	0.06	0.05	0.06
Female	0.09*	0.04	0.09*	0.04
Battleground state	0.31**	0.06	0.36**	0.07
Competitive race	-0.06	0.13	-0.05	0.13
Employed	0.13	0.12	0.14	0.12
Member of workforce	0.07	0.13	0.08	0.13
Native-born citizen	-0.18**	0.07	-0.20**	0.07
Moved within past 6 months	-0.38**	0.08	-0.39**	0.08
Constant	0.22	0.27	0.21	0.20
Pseudo-R-Squared	0.08		0.08	

Notes: N = 2,860 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 8. Probit model of turnout for Asian-American voters.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.37**	0.20	-0.26	0.17
Match signature	-0.17	0.22	-0.01	0.21
Non-photo ID	-0.40**	0.21	-0.28*	0.16
Photo ID	-0.30	0.21	----	----
Affidavit	----	----	0.12	0.30
Age 25-44	-0.11	0.23	-0.10	0.23
Age 45-64	0.06	0.26	0.08	0.26
Age65+	0.14	0.36	0.17	0.34
High School	0.54**	0.21	0.55**	0.21
Some college	0.36	0.31	0.36	0.31
College	0.67**	0.22	0.66**	0.23
Graduate School	0.57*	0.25	0.55*	0.26
Household income	0.01	0.01	0.01	0.01
Married	0.34**	0.13	0.34**	0.13
Female	0.16*	0.09	0.16*	0.08
Battleground state	0.29*	0.14	0.23	0.16
Competitive race	0.33*	0.19	0.27	0.22
Employed	-0.24	0.33	-0.25	0.33
Member of workforce	-0.54	0.35	-0.55	0.35
Native-born citizen	0.14	0.12	0.16	0.11
Moved within past 6 months	-0.38*	0.17	-0.39*	0.17
Constant	0.36	0.52	0.29	0.51
Pseudo-R-Squared	0.08		0.08	

Notes: N = 912 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Appendix

Table A-1. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements treated as a continuous variable.

Variable	Unstandardized Estimate	Standard Error
Intercept	-1.33**	0.14
Voter Identification Requirements	-0.01**	0.004
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01
% African-American	0.02	0.01
% Hispanic	-0.05**	0.01
% Age 65 or older	0.82**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.002**	0.001
-2 Log Likelihood	-8970.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111.
* p < .05 ** p < .01 (one-tailed tests).

Table A-2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements and interactions.

Variable	Unstandardized Estimate	Standard Error
Intercept	-1.39**	0.14
Sign Name	-0.02	0.013
Match Signature	-0.03*	0.02
Non-photo ID	-0.05**	0.01
Photo Identification	-0.05**	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01
% African-American	-0.02	0.03
% Hispanic	-0.22**	0.10
% Age 65 or older	0.8**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.002**	0.001
Signature*African-American	0.02	0.04
Match Signature*African-American	0.16**	0.07
Non-photo ID*African-American	0.03	0.03
Photo ID*African-American	0.20**	0.05
Signature*Hispanic	0.14	0.09
Match Signature*Hispanic	-0.01	0.11
Non-photo ID*Hispanic	0.20**	0.09
Photo ID*Hispanic	0.03	0.11
-2 Log Likelihood	-8966.7	

Coefficients are restricted maximum likelihood estimates. N = 3,111.
* p < .05 ** p < .01 (one-tailed tests).

Table A-3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements and interactions.		
Variable	**Unstandardized Estimate**	**Standard Error**
Intercept	-1.39**	0.14
Sign Name	0.0003	0.016
Match Signature	-0.001	0.02
Non-photo ID	-0.02	0.02
Affidavit	-0.02	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.02
% African-American	-0.02	0.02
% Hispanic	-0.19**	0.08
% Age 65 or older	0.82**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.003**	0.001
Signature*African-American	-0.007	0.03
Match Signature*African-American	0.15**	0.05
Non-photo ID*African-American	0.04	0.03
Affidavit*African-American	0.18**	0.05
Signature*Hispanic	0.12	0.08
Match Signature*Hispanic	-0.03	0.11
Non-photo ID*Hispanic	0.17*	0.08
Affidavit*Hispanic	-0.04	0.10
-2 Log Likelihood	-8960.8	

Coefficients are restricted maximum likelihood estimates. N = 3,111.
* p < .05 ** p < .01 (one-tailed tests).

Table A-4. Probit model of voter turnout treating maximum voter identification requirements as a continuous variable.

Variable	Unstandardized Estimate	Standard Error
Voter Identification Requirements	-0.04**	0.02
Hispanic	-0.09	0.05
African-American	0.24**	0.04
Asian-American	-0.38**	0.07
Age 25-44	0.005	0.02
Age 45-64	0.26**	0.03
Age65+	0.43**	0.03
High School	0.31**	0.02
Some college	0.57**	0.03
College	0.87**	0.04
Graduate School	0.98**	0.05
Household income	0.03**	0.003
Married	0.23**	0.02
Female	0.10**	0.01
Battleground state	0.19**	0.04
Competitive race	0.04	0.05
Employed	0.05	0.05
Member of workforce	-0.05	0.05
Native-born citizen	0.02	0.04
Moved within past 6 months	-0.29**	0.03
Constant	-0.08	0.10
Pseudo-R-Squared	0.09	

Notes: N = 54,973 registered voters

$p < .05^*$ $p < .01^{**}$ (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

APPENDIX D

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice.* 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics,* 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics.* 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review.* 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly.* 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------- "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice.* 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review.* 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy.* 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections.* Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective.* Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union.* Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science.* 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------- "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------- "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------- "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------- "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------- "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------- *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------- "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------- "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------- "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------- "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------- *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------- *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------- "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------- "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review.* 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix E

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

FINAL DRAFT
For Review by the Standards Board and Board of Advisors

Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Voter Identification Requirements
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252

May 16, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891.It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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Peer Review Group

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

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REVISED FINAL DRAFT
For review by the EAC Advisory Boards

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

- Opponents seek to forestall more stringent identification requirements, such as for government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate and investigates whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout, and important first step in assessing tradeoffs between ballot security and ballot access. The aim is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis was conducted to examine the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:[1] the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also consides some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.[2] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, although it used different statistical methods and two different sets of data on turnout in 2004 election, it points to the same general finding. As discussed at greater length in the appendix to this report, stricter voter identification requirements were correlated with reduced turnout in the models employed.[3] As explained below, these models find that a statistically significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible

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[1] See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

[2] The EAC has contracted with other researchers to study vote fraud issues.

[3] Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout.*

voters, however, the tradeoffs between ballot security and ballot access cannot be assessed fully.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.[4] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

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[4] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names. With the addition of the registration closing data to the aggregate analysis, photo id is no longer a

significant predictor of turnout. Signature match and non-photo id remain significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for

example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[5] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls

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[5] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
    I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors:

the convenience of the voter, the total time allowed to evaluate ballots[6], and the safe harbor provision in presidential elections.

5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more uncertain.

SUMMARY OF RESEARCH

Background and Approach of the Study

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether the vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the

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[6] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.

- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics.* 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.

- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior.* 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.
- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.

- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.*, 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [7] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[8]

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[7] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.
[8] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[9] Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter

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[9] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[10] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.[11] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[12]

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[10] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[11] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

[12] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[13]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[14]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[15] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.
5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[16]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it,

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[13] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[14] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[15] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[16] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

Voter ID and Turnout

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004.These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[17] Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.[18]

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum

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[17] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

[18] As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.[19] Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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[19] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

TABLE 1 – Voter ID Requirements[20]

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

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[20] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .05$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ($r= -.20$, $p = .16$). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.2 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.4 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.[21]

Voter identification requirements are just one factor that may affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American [22]
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

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[21] The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

[22] The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that voter identification requirements such as signature matching, a non-photo ID or a photo ID are associated with lower turnout than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.[23]

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum

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[23] This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

requirements, a signature match, non-photo identification or photo identification were correlated with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.[24] Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[25] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens; the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey. In addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have

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[24] For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[24] Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

[25] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

influenced turnout in 2004.[26] The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[27]

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.[28] Table 3 below shows predicted probabilities (calculated from the probit coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.[29] .

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[26] The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

[27] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[28] A probit model is a popular specification of a generalized linear regression model, using the probit link function.

[29] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

Table 3. Predicted probability of voter turnout – all voters

	Maximum requirement	Minimum requirement
State name	91.7%	91.5%
Sign name	89.9%	90.2%
Match signature	Not significant	Not significant
Non-photo ID	89.0%	89.0%
Photo ID	88.8%	----
Affidavit	----	87.%5
Total difference from "state name" to "photo ID" or "affidavit"	**2.9%**	**4.0%**
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[30] In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

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[30] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.[31] The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

Varying voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

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[31] Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

In the aggregate data, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names.

The signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names. That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*).. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring <u>all</u> in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.[32] Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL

---

[32] Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at

the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased.[33]

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents

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[33] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

[redacted]
05/11/2006 03:05 PM

T[redacted]
cc
bcc
Subject Re: Many thanks for your active participation

History: This message has been replied to.

Thanks, Karen . . . am very interested in any future projects you have (well, most, I'm sure . . .).

Jan

Quoting klynndyson@eac.gov:

> Dr. Leighley-
>
> On behalf of the EAC our sincere thanks for your willingness to review the
> Eagleton paper on Voter Identification. You insights and critique were
> extremely helpful and provided our agency with just the type of input which
> was needed.
>
> I'm please to know of your work and hope that I may be able to call upon
> your expertise at some point in the near future.
>
> Regards-
>
> Karen
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

"Tom O'neill"
[redacted]
05/11/2006 01:28 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Receipt of Final Eagleton papers for Commissioner review

History: This message has been replied to.

Thanks, Karen.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, May 11, 2006 1:17 PM
To:[redacted]
Cc: bbenavides@eac.gov; twilkey@eac.gov
Subject: RE: Receipt of Final Eagleton papers for Commissioner review

Many thanks , Tom-

I will pass this schedule on to the Executive Director's office.

We will put final review of the Provisional Voting paper on the Commissioner's Tuesday meeting schedule (May 16) and the Voter ID paper on Thursday's meeting (May 18)

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

05/11/2006 01:09 PM

To klynndyson@eac.gov
cc
Subject RE: Thank you and moving into the home stretch

Karen: You will have the Provisional Voting paper tomorrow. Tim will rework his paper and have a new version to me (using the dummy variable approach) on Monday. I will have a report that incorporates the new work (with our original approach described in an appendix) to you late Tuesday. Does that work with the Commission's schedule for review of the paper?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, May 11, 2006 12:58 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Thank you and moving into the home stretch

Tom et.al-

Many, many thanks to you and the staff for your active participation and support in what I found to be an extremely helpful and productive hour.

Special thanks to Tim for his openness to new approaches and to all the hard work he is doing with running these numbers (ad infinitum).

The touch questions-

1. Realistically, when should I expect your final VOTER ID paper to present to the Commissioners?
2. Can I expect your final Provisional Voting Paper by tomorrow COB?

Thanks again for your fine efforts.

K
the $ Commissioners

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

[redacted]
05/11/2006 11:38 AM

To [redacted], abarrington@eac.gov
cc [redacted]
bcc
Subject conference call full?

History: This message has been replied to.

Hi,

I'm trying to access the conference call but the system says it's full. I will keep trying for a few minutes.

Perhaps this is a problem because I was given two different times for conference calls?

I am currently at [redacted] and [redacted] if anyone is able to respond.

Jan

"Tom O'neill"
[redacted]
05/10/2006 10:17 AM

To klynndyson@eac.gov
cc
bcc
Subject Briefings for advisory boards

Karen,

In our conversation last week, you mentioned 4 briefings that we would deliver on May 23 and 24: Separate briefings to the Board of Advisors on Voter ID and Provisional Voting, and separate briefings to the Standards Board on Voter ID and Provisional Voting. That's a total of 4 briefings.

Your email yesterday mentions just 2 briefings, one on voter ID and one on provisional voting. Does that mean that the two boards meet jointly for the briefings?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, May 09, 2006 4:34 PM
To: klynndyson@eac.gov
Cc: [redacted]; Tom O'neill
Subject: Re:Travel arrangement for the EAC Board of Advisors and Standards Board meeting

Tom O' Neill and Ned Foley-

As you know you are scheduled to make two presentations to the EAC Board of Advisors and Standards Board on **Tuesday May 23, 2006 from 2:30-4:00 PM (on Provisional Voting) and on Wednesday ,May 24th from 1:40-2:45 PM (on Voter Identification)**

If you have not already done so, please make your hotel and travel arrangements through Adventure Travel, Judy Mays 205-444-4833 (judy.mays@adtrav.com)

These reservations should be made no later than tomorrow COB.

Please indicate to Judy Mays that you are a contractor, who is scheduled to make a presentation at the meeting.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

[redacted]
05/09/2006 04:05 PM

To klynndyson@eac.gov
cc
bcc
Subject Re: Materials for Thursday's 11:30 conference call

History: This message has been forwarded.

That's fine--but I spoke to Aletha a couple hours ago and she said it was at 11.
I will go with 11:30 unless I hear otherwise.

Jan

Quoting klynndyson@eac.gov:

> Greetings-
>
> Please note that Thursday's call is at 11:30 EDT.
>
> Thanks
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
>
>
>
> Karen Lynn-Dyson/EAC/GOV
> 05/09/2006 09:54 AM
>
> To
> [redacted]
> cc
> Aletha Barrington/CONTRACTOR/EAC/GOV@EAC
> Subject
> Materials for Thursday's 11:30 conference call
>
>
>
>
>
> All-
>
> Attached please find the complete packet of materials that will serve as
> the basis for our conference call on Thursday. You have already received
> the statistical analysis; the voter ID report was submitted this morning.
>
> The Eagleton staff have noted that you may find the material contained in
> Appendix A useful to your review; the other appendices are likely to be
> less germane .
>
> The call in information for Thursday:

>
> 1-866-222-9044
> Passcode 62209#
>
> Thank you again for your assistance.
>
> Regards-
>
> Karen Lynn-Dyson
>
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

"Tom O'neill"
[redacted]
05/08/2006 07:15 PM

To klynndyson@eac.gov
cc [redacted]
bcc
Subject Voter ID Report and Appendices

History: This message has been replied to and forwarded.

Karen,

Attached is the final draft report on our Voter ID analysis, revised to incorporate the comments made by the EAC at and after our meeting in Washington and the new statistical analysis performed by Tim Vercellotti, which I sent you last Friday. Included in the attached file are about 60 pages of appendices. You may or may not want to distribute all the appendices to the reviewers who will take part in Thursday's conference call. They might find Appendix A useful; it provides a detailed summary of the actual statutory language on Voter ID in each of the states. The other appendices, which are called for as deliverables in the contract, provide worthwhile information for the record, but are not likely to offer material for the reviewers to focus on.

When it comes time to distribute this material to the advisory boards before our meeting with them in May, once again you may want to exercise judgment about how much of it is likely to prove of interest to them.

We look forward to Thursday's teleconference.

Tom O'Neill

VoterIDReport0508.doc

REVISED FINAL DRAFT
05/08/06

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

This report to the United States Election Assistance Commission (EAC) analyzes the effects of voter identification requirements on turnout in the 2004 election and makes recommendations for best practices to evaluate proposals for voter ID requirements. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a draft report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. They are progressively more rigorous based on the demands they make on voters.[1] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity,

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[1] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, we drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints on voter ID requirements.

Findings

Our analysis of data from the 2004 election indicates that the form of identification required of voters affects turnout. Lack of ID can keep voters from the polls or prevent them from casting a regular ballot if they go to the polling place.[2] This finding emerged from both the analysis of aggregate, county-level data and the individual-level data of the Current Population Survey. The overall effect for all registered voters was fairly small, but statistically significant.

Voter turnout in 2004 was lower in states where voter identification requirements were more demanding. The data show a general movement toward lower turnout as voters are required to present levels of proof of their identify.

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[2] It also seems reasonable to conclude that in states that require an identity document to vote, more voters –those lacking the required ID—will cast provisional ballots. This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.

The aggregate data show that 60.9 percent of the estimated citizen voting age population turned out in 2004. An average of 64.6 percent turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification, a reduction of 6.5 percentage points. That figure, however, probably overstates the effect of voter ID requirements since the inclusion of other factors in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of other factors, the analysis supports the hypothesis that as voter identification requirements increases, turnout declines.

The effects were more pronounced for some specific subgroups. Hispanic voters, the poor and those who did not graduate from high school appear to be less likely to vote as the identification requirement becomes more demanding. The analysis for some other demographic groups illustrate the range of effects predicted for more rigorous voter ID requirements:

Race or Ethnicity

- In the individual-level data for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of identification requirements.
- More rigorous ID requirements did not have a statistically significant effect when looking at all African-Americans, but
- African-American voters from households below the poverty line were 7.5 percent less likely to vote as the ID requirements varied from stating one's name to providing photo identification.

Income

- Citizens from poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.

Education

- Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the requirements ranged from stating one's name to providing photo identification.

Age

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Turnout by young (18-24) African-American voters in states that required a government-issued photo ID was about 10% less likely to vote than in states where they had only to state their name.
- The elderly, while they would be slightly less likely to vote as the requirements changed from stating name to providing photo ID, would not necessarily be affected in the dramatic manner predicted by opponents of photo identification requirements.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity.[3] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

The current lack of understanding of precisely how voter ID requirements affect turnout can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the

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[3] The EAC has contracted with other researchers to study vote fraud issues.

2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[4] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements affect the decision by potential voters to go or stay away from the polls-- are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

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[4] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
    I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[5], and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is

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[5] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

SUMMARY OF RESEARCH

Background and Approach of the Study

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [6] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[7]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[8]

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[6] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

[7] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[8] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and , if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[9] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot

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[9] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

rejected.[10] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here can best be described as the questions policy-makes should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[11]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[12]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[13]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve

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[10] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

[11] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[12] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[13] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[14] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[15]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, nor unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another.

Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex. Moving beyond the statutes and regulations,

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[14] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[15] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places.

Like any system run by fallible people, the voter ID process is subject to variation in practice.[16] Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Under the pressures of Election Day, there is no sure way to report the wide variety of conditions each voter encounters. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. Nevertheless, we are satisfied that the categories used in this report provide a level of discrimination among voter identification regimes sufficient for the analysis that we have undertaken.

TABLE 1 -- Voter ID Requirements[17]

State	**Forms of ID Required 2004**	**Current ID Requirement for First-Time Voters**	**Current ID Requirements for All Other Voters**	**Verification Method for Provisional Ballots**
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit

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[16] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

[17] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration
South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable for first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Effect of Voter ID requirements on Turnout

We examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

The Voter ID category assigned to each state is shown in Table 1. We analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [18]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 64.6 percent of the citizen voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis supports the hypothesis that as voter identification requirements become more stringent, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result: Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Methods

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had

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[18] See Appendix for the full report: Tim Vercellotti, "Analysis of Voter Identification Requirements on Turnout," The Eagleton Institute of Politics, Rutgers University, May 4, 2006.

to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[19]

We coded the states according to these requirements to test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

Election laws in many states, however, offer exceptions to these requirements if potential voters lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). In recognition of this fact, we also categorized states based on the *minimum* requirement for voting with a regular ballot.

In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states).

We treated the minimum ID in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

We examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the

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[19] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

The aggregate data posed a greater challenge to determine percentage of the voting-age population that has U.S. citizenship. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue we estimated the 2004 citizen voting-age population for each county using a method reported. Therefore, we calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. This method was used in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission.

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. In the statistical analysis, we coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification.

Findings

As the level of required ID proof increases, with photo identification as the most demanding requirement, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.6 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.8 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone do not determine voter turnout. Other factors make a difference in turnout, often a greater difference than the ID requirements. Multivariate models can take into account other predictors of turnout and therefore paint a more complete picture of the relationship between voter identification requirements and turnout. The model used here also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The maximum ID requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. The more senior citizens and African-Americans in the county, the higher the turnout. The percentage of the population living below the poverty reduced turnout. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance ($p = .05$).

The analysis tested the hypothesis that stricter voter ID requirements dampen turnout among minorities. The data revealed no statistically significant effect on turnout for African-Americans in general. But it revealed a significant reduction in turnout for Hispanics and the poor. The analysis using the minimum ID categories produced similar results.

Analysis of the aggregate data at the county level supports the hypothesis that as voter ID requirements grow stricter, turnout declines. This effect is strongest in counties with concentrations of Hispanic residents or families below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout.[20] Married people are more likely to vote than those who are not married. To explore the effects of voter identification requirements on turnout, examining individual-level data is important.

Individual-level Analysis

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 60.9%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger citizen voting-age population for the

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[20] Education is an important factor in predicting turnout. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[21] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. Excluded are those who said they were not registered to vote and those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Also excluded are respondents who said they were not U.S. citizens.[22]

The dependent variable in these analyses is whether a respondent reported voting in the November 2004 election. As in the aggregate analysis, stricter voter ID requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004.

Table 3 Predicted probability of voter turnout

ID Category	Maximum requirement	Minimum requirement
State name	91.2%	91.1%
Sign name	90.6%	90.3%
Match signature	90.0%	89.5%
ID	89.4%	88.7%
Photo ID	88.7%	----
Affidavit	----	87.8%
Difference from lowest to highest	**2.50%**	**3.30%**
N	54,973	

Predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

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[21] The Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent.

[22] The CPS did not ask the voting questions of respondents who were not U.S. citizens. The design of the questionnaire skips those questions for non- citizens.

The influence of voter identification requirements, holding all other variables constant, is shown in Table 3 below. The probability of voting dropped with each level of voter identification requirement, with a total drop of 2.5 percent, across the five types of identification for the maximum requirement and 3.3% for the minimum requirements. [23]

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group.

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

- Turnout in states requiring photo ID was predicted as 8.9 percentage points lower than in states where voters simply stated their names.
- The strictest ID requirements reduced the probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out by 7.8 to 9.2 percentage points.
- For African-Americans in the 18- to 24-year-old age group the gap was 10.6 percentage points.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[24] Allowing the maximum voting requirement to

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[23] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of <u>all</u> citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

[24] Respondents were coded as being above or below the U.S. Census Bureau's 2004 poverty line based on their reported annual household income and size of the household.

vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well. Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Conclusions of the Analysis

As the stringency of voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data.

- In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements.
- Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.
- African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education.

- Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification.

- When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters.

- The effects on African-American voters were pronounced for two specific sub-samples, African-American voters living below the poverty line and those in the 18- to 24-year-old age group.
- The elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. Do potential voters who cannot or do not want to meet the identification requirements simply stay away from the polls? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? (Proponents of stricter voter ID requirements might argue that some part of the reduction comes from keeping the truly ineligible from voting.)

Our data alone cannot resolve these questions. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.
It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued

photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction,

enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the

legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [25]

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[25] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal*

The dynamics of Voter ID requirements –how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed. [26]

Election Reform, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

[26] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

a. Summary of Voter ID Requirements by State (included)

b. Summary of case law on Voter ID issues (included with this draft)

c. Analysis of Effects of Voter ID Requirements on Turnout (furnished separately)

d. Indexed database of major articles on Voter ID Requirements and related topics

e. Compendium of states' legislation, procedures, and litigation (available as an electronic document)

Appendix A
Summary of Voter Identification Requirements By State

Prepared by
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Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification: (1) A current valid photo identification. (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following: a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification. b. A valid United States passport. c. A valid Alabama hunting or fishing license. d. A valid Alabama permit to carry a pistol or revolver. e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States. f. A valid United States military identification card. g. A certified copy of the elector's birth certificate. h. A valid Social Security card. i. Certified naturalization documentation. j. A certified copy of court records showing adoption or name change. k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card"). (c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b). (e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law. (f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs. Effective Date: June 24, 2003	Ala. Code § 17-11A-1
Alaska	Provide ID	(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including (1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or (2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this	Alaska Stat. § 15.15.225

		paragraph must show the name and current address of the voter. (b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under AS 15.07.050, and did not provide identification as required in AS 15.07.060. (c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot. effective June 17, 2003	
Arizona	Provide ID	B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot: 1. The person shall present either one of the following: (a) A current form of identification that bears a photograph of the person and the name of the person. (b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person. 2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584. Effective Dec. 1, 2003	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	7-5-305. Requirements. (a) Before a person is permitted to vote, the election official shall: (1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list; (2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth; (3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list; (4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate; (5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct. (B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files. (C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct; (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files; (7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and	Arkansas Code Annotated § 7-5-305

		(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card. (B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification. (ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney. (iii) The prosecuting attorney may investigate possible voter fraud; and (9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the preson is a disabled voter and presents himself or herself to vote. Effective: July 16, 2003	
California	Sign Name	Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article. (Enacted in 1994, no amendments since)	Cal. Elec. Code § 14216
Colorado	Provide ID	(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges, * * * (4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title. (19.5)(a) "Identification" means: (I) A valid Colorado driver's license; (II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.; (III) A valid United States passport; (IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state; (V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States; (VI) A valid United States military identification card with a photograph of the eligible elector; (VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector; (VIII) A valid medicare or medicaid card issued by the United States health care	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

		financing administration; (IX) A certified copy of a birth certificate for the elector issued in the United States; or (X) Certified documentation of naturalization. (b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado. Effective 5/28/2004	
Connecticut	Provide ID	(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate. Effective May 10., 2004	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record. Effective: July 9, 2002	15 Del. Code § 4937
D.C.	Sign Name	(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection. (2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the	D.C. Code § 1-1001.07

		polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection. (3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records. (Effective April 3, 2001)(not added as part of 2005 amendment)	
Florida	Photo ID	101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector. (2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49. **97.0535** (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired: 1. Florida driver's license. 2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles. 3. United States passport. 4. Employee badge or identification. 5. Buyer's club identification. 6. Debit or credit card. 7. Military identification. 8. Student identification. 9. Retirement center identification. 10. Neighborhood association identification. 11. Entertainment identification. 12. Public assistance identification. (b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant: 1. Utility bill.	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535

		2. Bank statement. 3. Government check. 4. Paycheck. 5. Other government document (excluding voter identification card). Version effective 1/1/2005-12/31/2005	
Georgia	Provide ID	(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following: (1) A valid Georgia driver's license; (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification; (3) A valid United States passport; (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state; (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business; (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; (7) A valid Georgia license to carry a pistol or revolver; (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States; (9) A valid United States military identification card; (10) A certified copy of the elector's birth certificate; (11) A valid social security card; (12) Certified naturalization documentation; (13) A certified copy of court records showing adoption, name, or sex change; (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector; (15) A bank statement, or a legible copy thereof, showing the name and address of the elector; (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or (17) A government document, or a legible copy thereof, showing the name and address of the elector. (b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement." effective June, 2003	Ga. Code. Ann. § 21-2-417

Hawaii	Photo ID	(b) The voter shall present valid identification to the official in charge of the pollbook. *Do I Need an I.D. to Vote on Election Day?* Yes: Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification. From the 2004 version of the administrative code. **§ 11-136 Poll book, identification, voting.** Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person. After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. Last amended 2003.	Haw. Code. R. § 2-51-80 (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b) Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix HRS 11-136
Idaho	Sign Name	(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book. (2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein. (5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. (Last amended in 1972)	Id. St. §34-1106
Illinois	Give Name	Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he	10 Ill. Comp. Stat. 5/17-9

		shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.	
Indiana	Sign Name	–	West's Annotated Indiana Code § 3-11-8-25
Iowa	Sign Name	1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form: VOTER'S DECLARATION OF ELIGIBILITY I do solemnly swear or affirm that I am a resident of the .... precinct, ... ward or township, city of ...., county of ...., Iowa. I am a registered voter. I have not voted and will not vote in any other precinct in said election. I understand that any false statement in this declaration is a criminal offense punishable as provided by law. ____________________ Signature of Voter ____________________ Address ____________________ Telephone Approved:	Iowa Code § 49.77

		Board Member 2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials. 3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner. A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote. (From 2004 version of Iowa Annotated Code; effective January 1, 1995)	
Kansas	Sign Name	(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention. (Approved April 14, 2004, 2004 Kansas Laws Ch. 93)	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	117.227 Confirmation of voter's identity Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification. Effective: 7/15/02 31 KAR 4:010. Voter identification cards. Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.	Ky Rev. Stat. Ann. 117.227 31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	A. Identification of voters. (1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place. (2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant	La. Rev. Stat. Ann. 18:562

		shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565. Effective: 1/1/2002	
Maine	Give Name	The voting procedure is as follows. 1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice. (In effect at time of 2003 amendment: 2003, c. 584, § 9)	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	10-310. (a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall: (1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot; (2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or (ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article; (3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register; (4) verify the address of the voter's residence; (5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and (6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.	Md. Elec. Law § 10-310
Mass.	Give Name	Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited. Last amended in 1981 (5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).	Mass. Ann. Laws 54 § 76 950 Mass. Code Regs. 52.03
Michigan	Sign Name	(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state	Mich. Comp. Laws Ann. §

		identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727. (2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector. The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies. (Effective March 31, 1997)	168.523
Minnesota	Sign Name	(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not	Minn. Stat. § 204C.10

		more than $10,000, or both." (b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth. (c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest. (Effective January 1, 2004)	
Mississippi	Sign Name	* * * When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance. (Effective January 1, 1987)	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list: (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state; (2) Identification issued by the United States government or agency thereof; (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri; (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; (5) Driver's license or state identification card issued by another state; or (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose. (Last amended in 2002)	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address. (From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [Unrelated section was amended in 2005])	Mont. Code Ann. §13-13-114(1)(a)
Nebraska	Sign Name	(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document. (Last amended in 2003) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter. (Last updated in 2003)	Neb. Rev. Stat. § 32-913 Neb. Rev. Stat. § 32-914
Nevada	Match Sig.	1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2. 2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are: (a) The card issued to the voter at the time he registered to vote; (b) A driver's license; (c) An identification card issued by the Department of Motor Vehicles; (d) A military identification card; or	Nev. Rev. Stat.§ 293.277

		(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture. Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers. b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery. c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5). Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

		case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list. E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot. G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster. (From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)	(Recompiled as §1-12 -7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)
New York	Match Sig.	1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith. 2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election. 3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature. 4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the	N.Y. Law § 8-304 (McKinney)

		space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record. 5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same Last Amended 1986	
North Carolina	Give Name	(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook. 1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address. (From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark. The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot. (Effective at time of last update, 1992 H 182, eff. 4-9-93)	Ohio Rev. Code Ann.-§ 3505.18
Oklahoma	Sign Name	Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry. (Last amended in 1990) Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours. (Last amended in 1990)	Okla. Stat. Ann. tit. 26, § 7-114 Okla. Stat. Ann. tit. 26, § 7-117
Oregon	Match Sig.	All elections in Oregon are Vote by Mail. An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity (http://www.uhavavote.org/votingguide/votebymail.html) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register. (In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))	
Rhode Island	Give Name	(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form: BALLOT APPLICATION (Poll List) Senatorial District ____________________ Representative District ____________ Voting District ________________________ Election Date ____ I hereby certify that I am a registered and qualified elector in the above voting district of City of and hereby make application for ballots to be voted at this election. ____ (Signature of Voter) ____ (Residence Address) Number Approved ____________________________________ (Supervisor of Election)	R.I. Gen. Laws § 17-19-24

		(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time. (Last amended 2004, Current through January 2005 Session)	
South Carolina	Photo ID	**§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.** When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5- 125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers. Last amended: 1968	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either: (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or	S.D. Codified Laws § 12-18-6.1

		technical school, located within the State of South Dakota. Last amended March 2004	
Tennessee	Provide ID	Identification of eligible voters (a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet. (2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists: (A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar; (B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list; (C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and (D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission. Last amended 2003	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place. (Last amended in 1997)	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges. (b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district. (3) If the election judge determines that the voter is registered: (a) the election judge in charge of the official register shall: (i) write the ballot number opposite the name of the voter in the official register; and	Utah Code Ann. § 20A-3-104

		(ii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter's name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) hand the voter a ballot; and (iv) allow the voter to enter the voting booth. (In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)	
Vermont	Give Name	Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and: (1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting. (2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting (Last amended in 2003)	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him. B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business. If the voter's name is found on the pollbook, if he presents one of the forms of	Va. Code. Ann.

		identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement. (Version in effect as of 2004- effective 4/12/2004)	
Washington	Sign Name	29A.44.201. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. (In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004) 29A.44.210. Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter. The precinct election officers shall then record the voter's name. Effective date: July 1, 2004	Wash. Rev. Code § 29A.44.201 & 29A.44.210
West Virginia	Match Sig.	(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon. * * * (c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the	W. Va. Code § 3-1-34 (a)

		election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter. (In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)	
Wisconsin	Give Name	6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number. (In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)	Wis. Stat. § 6.79
Wyoming	Give Name	(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22- 15-109, no identification shall be required when: (i) Voting in person or by mail after having registered in person; or (ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election. (In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)	Wyo. Stat. Ann. § 22-3-118

APPENDIX B –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail.

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14th Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

  - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
  - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

***American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[27]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[27] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[28]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[29] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[28] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[29] <u>GA Legislature May Revisit Voter ID Law</u>, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[30] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[30] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

Appendix C

"Analysis of Effects of Voter Identification Requirements on Turnout "

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PROVIDED EARLIER

APPENDIX D

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
    - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
    - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
    - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
    - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
    - Discusses changes in AL to their election law in 2003, including adding voter ID
    - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
    - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
    - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
    - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
    - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
    - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
    - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
    - Lot of analysis on HAVA and voter ID
    - Little bit of historical
    - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice.* 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics,* 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics.* 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review.* 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly.* 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------- "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice.* 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review.* 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy.* 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections.* Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective.* Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union.* Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science.* 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------- "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------- "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------- "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------- "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------- "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------- *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------- "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------- "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------- "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------- "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------- *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------- *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------- "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------- "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces,* 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review.* 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix E

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

Aletha Barrington/CONTRACTOR/EAC/GOV
05/08/2006 04:05 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Verification that Voter ID paper was received

Karen,

I got a response back from everyone but Jay Leighley about their availability for the conference call, do you have a contact number for him?

Aletha Barrington
Contracts Assistant
U.S. Election Assistance Commission
(202) 566-2209 (office)
(202) 566-3128 (fax)

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
05/08/2006 03:12 PM

To Aletha Barrington/CONTRACTOR/EAC/GOV@EAC
cc
Subject Verification that Voter ID paper was received

I assume you got verification from Jonathan Nagler, Adam Berinsky and Jan Leighley that they received the paper last Friday.

Also assume you will have a conference call in number to them and to Tom O'Neill by tomorrow, latest.

Thanks

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
<[redacted]>
05/08/2006 01:16 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Delivery of the final report on Provisional Voting

History: This message has been replied to.

Karen,

I plan to send you late today or early tomorrow the revised Voter ID report that will be included in our teleconference on Thursday. Once that is in your hands, I will turn my attention to the Provisional Voting report, and will have that to you before the end of the week.

Has 11:30 been confirmed as the time for the teleconference?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, May 08, 2006 12:59 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Delivery of the final report on Provisional Voting

Tom-

I'd like to be able to include the final report on Provisional Voting in the materials going to EAC Standards Board and Board of Advisors in advance of their meetings.

It cannot be included unless it has been reviewed and approved by the four Commissioners.

I believe you said I would have the final copy of it sometime this week?

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]
05/08/2006 11:01 AM

To klynndyson@eac.gov
cc
bcc
Subject May 11 Conference Call

History: This message has been replied to.

Karen,

Has the 11:30 time for our conference call on May 11 been confirmed? I'd like to pass along the call-in and ID numbers to our participants as soon as possible. Do you have the information available yet?

Tom O'Neill

Aletha Barrington/CONTRACTOR/EAC/GOV

05/05/2006 10:13 AM

To [redacted]

cc [redacted], Karen Lynn-Dyson/EAC/GOV@EAC

bcc

Subject Revised Voter ID Analysis

Good morning Tanisha,

To my understanding Dr. Nagler is out of the office today and I been informed to contact you with any information for him. I am attaching a copy of the **Revised Voter ID Analysis**. Will you please see that he receives it today? If you have any questions regarding this document feel free to contact me.

Thanks!

Aletha Barrington
Contracts Assistant
U.S. Election Assistance Commission
(202) 566-2209 (office)
(202) 566-3128 (fax)

VoterIDAnalysis VercRev0504.doc

Deliberative Process Privilege

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University

May 4, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater for some specific types of requirements. For example, critics argue that requiring voters to produce government-issued photo identification on Election Day is more demanding than, say, requiring that they state their names at the polling place. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I treated the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[2]

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[2] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. I coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the

dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county exerted a positive effect on voter turnout, and the percentage of individuals living below the poverty line had a negative effect. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance ($p = .05$).

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] In addition, adding the interactions to the model resulted in the percentage of Hispanics in the population having a direct and negative effect on turnout. The interactions suggest that voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ($p < 0.005$).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

[Table 3 here]

The effects of the minimum requirements fell short of statistical significance ($p = 0.08$). The battleground state variable continued to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate had no statistically significant effect. As in the maximum identification requirement model, as the percentage of the population that is poor increased, turnout declined. As the percentage of elderly increased, so did turnout. The proportion of African-Americans in the population had a positive effect on turnout, while the percentage of Hispanics did not affect turnout.

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intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.13 [-0.03 (voter id) - 0.13 (Hispanic) + 0.03 (voter id X Hispanic)].

citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[7] As in the analysis of aggregate data, I coded voter identification requirements for each respondent's state of residence on a scale of one to five, with one representing the least demanding requirement (stating one's name) and five representing the most demanding requirement (photo identification or affidavit).

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes).[8] Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which

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[7] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[8] Asian-Americans are included in the "other non-white races" category. In response to a request from officials at the U.S. Election Assistance Commission who had read an earlier version of this paper and were curious about the experiences of Asian-Americans, I ran models using Asian-Americans as a separate category in addition to the models presented here. Voter identification requirements did not have a statistically significant effect on whether Asian-American voters said they turned out in the 2004 election.

calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[9] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 0.912 for stating one's name to 0.887 for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of .025, or 2.5 percent, across the five types of identification.[10] When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it

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[9] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[10] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of <u>all</u> citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest, omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[11] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of Black/Non-Hispanics voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent when the maximum requirement was stating one's name, and the probability dropped 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Breaking down the 18- to 24-year-old age group by race shed additional light on the effects of voter identification requirements on specific groups.

[Table 8 here]

The gap in predicted probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out was 9.2 percent when the identification requirements varied from stating one's name to providing photo identification. The gap was 7.8 percent when taking into account the minimum requirements. The effects of maximum voter identification requirements also were statistically significant for African-Americans in the 18- to 24-year-old age group, with a gap in

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[11] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

the predicted probability of voting of 10.6 percent. Maximum and minimum voter identification requirements were not a significant predictor of voting among Hispanics ages 18 to 24.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[12]

[Table 9 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements). Given that political discourse about voter identification requirements includes concerns about the effects of the requirements on poor and minority voters, I also ran probit analyses for sub-samples of white and minority voters who fell below the poverty line. The voter identification requirements did not exert statistically significant effects on turnout among poor White/Non-Hispanic and Hispanic voters, but did have a significant effect on Black/Non-Hispanic voters who were below the poverty line.[13] Allowing the maximum voting requirement to vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 10 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

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[12] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

[13] The lack of significant effects for poor Hispanic voters is in contrast to the results from the aggregate data analysis. The sub-sample of poor Hispanic voters was small (n = 491), which may have contributed to the lack of statistical significance.

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit. African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters. The effects on African-American voters were pronounced for two specific sub-samples: African-American voters living below the poverty line and those in the 18- to 24-year-old age group. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[14] Or, do the requirements result in some voters

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[14] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not

being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		**Minimum Requirement**	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.6 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.69	0.02
Voter ID requirements	-0.01**	0.003	-0.03**	0.004
Battleground State	0.04*	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.48**	0.03	0.50**	0.03
% African-American	0.05**	0.01	0.06	0.03
% Hispanic	-0.02	0.01	-0.13**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8638.0		-8651.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * $p < .05$ ** $p < .01$ (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.63	0.02	0.66	0.02
Voter ID requirements	-0.009	0.005	-0.02**	0.006
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.48**	0.03	0.48**	0.03
% African-American	0.05**	0.01	0.04	0.03
% Hispanic	-0.12	0.01	-0.13**	0.04
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	0.01	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8630.8		-8620.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		**Minimum requirements**	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05* p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model		
	Maximum requirement	**Minimum requirement**
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White/Non-Hispanic voters		**Hispanic voters**
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	**Minimum requirements**	**Maximum requirements**	**Minimum requirements**	**Minimum requirements**	**Minimum requirements**
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.795	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Deliberative Process Privilege

Table 8. Predicted probability of voter turnout – Age groups by race

	White/Non-Hispanic 18 - 24		**Black/Non-Hispanic 18 – 24**
	Maximum requirements	**Minimum requirements**	**Maximum requirements**
State name	0.844	0.836	0.899
Sign name	0.823	0.818	0.877
Match signature	0.801	0.799	0.852
Non-photo ID	0.777	0.779	0.824
Photo ID	0.752	----	0.793
Affidavit	----	0.758	----
Total difference -- lowest to highest	0.092	0.078	0.106
N	3,814		562

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Minimum voter identification requirements were not a significant predictor of voting for Black/Non-Hispanic voters ages 18 to 24. Maximum and minimum voter identification requirements were not a significant predictor of voting for Hispanic voters ages 18 to 24.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – Voters above and below the poverty line

	All voters above the poverty line		**All voters below the poverty line**	**Black/Non-Hispanic voters below the poverty line**
	Maximum requirement	**Minimum requirement**	**Minimum requirement**	**Maximum requirement**
State name	0.920	0.922	0.784	0.833
Sign name	0.915	0.915	0.772	0.816
Match signature	0.909	0.907	0.758	0.798
Non-photo ID	0.903	0.899	0.745	0.778
Photo ID	0.897	----	----	0.758
Affidavit	----	0.891	0.731	
Total difference from lowest to highest	0.023	0.031	0.053	0.075
N	49,935		5,038	1,204

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for white and Hispanic voters who were below the poverty line. Minimum voter identification requirements were not a significant predictor of voting for Black voters below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 10. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	**Minimum requirement**	**Maximum requirement**	**Minimum requirement**	**Maximum requirement**	**Minimum requirement**	**Maximum requirement**	**Minimum requirement**
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Deliberative Process Privilege

"Tom O'neill"
[redacted]
05/04/2006 05:00 PM

To klynndyson@eac.gov
cc [redacted]
bcc
Subject Revised Voter ID Analysis

History: This message has been forwarded.

Karen,

Attached is Tim Vercellotti's Voter ID analysis revised to use Citizen Voting Age population as the base for turnout calculations and to take account of comments or issues raised by the EAC and our Peer Review Group. This draft is for distribution to the reviewers who will meet by teleconference on May 11, at, we understand, 11:30 a.m.

You are receiving this at the same time that it is being distributed to the Eagleton-Moritz team so that the new reviewers will have a week to prepare for our conversation on the 11th. Early next week you will receive a revised summary paper on Voter ID that incorporates the new data and findings in Tim's revised analysis. That too will be for distribution to the new reviewers.

Tom O'Neill

VoterIDAnalysis VercRev0504.doc

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University
May 4, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater for some specific types of requirements. For example, critics argue that requiring voters to produce government-issued photo identification on Election Day is more demanding than, say, requiring that they state their names at the polling place. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I treated the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[2]

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[2] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. I coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the

dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county exerted a positive effect on voter turnout, and the percentage of individuals living below the poverty line had a negative effect. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance ($p = .05$).

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] In addition, adding the interactions to the model resulted in the percentage of Hispanics in the population having a direct and negative effect on turnout. The interactions suggest that voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ($p < 0.005$).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

[Table 3 here]

The effects of the minimum requirements fell short of statistical significance ($p = 0.08$). The battleground state variable continued to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate had no statistically significant effect. As in the maximum identification requirement model, as the percentage of the population that is poor increased, turnout declined. As the percentage of elderly increased, so did turnout. The proportion of African-Americans in the population had a positive effect on turnout, while the percentage of Hispanics did not affect turnout.

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intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.13 [-0.03 (voter id) - 0.13 (Hispanic) + 0.03 (voter id X Hispanic)].

Adding interactive effects to the model resulted in a statistically significant and negative effect of minimum voter identification requirements on turnout. The percentage of Hispanic adults in the county had a significant and negative effect on turnout, and the percentage of individuals below the poverty line continued to have a negative effect. Interactions between the percentages of Hispanics and those below the poverty line and minimum voter identification requirements also were significant. The percentage of African-Americans in the county and the interaction between African-Americans and voter identification requirements were not significant. A chi-square test for the difference in fit between the two models showed that the model with interactions provides a better fit to the data ($p < .025$).

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the demands of voter identification requirements increase, turnout declines. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[5] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[6] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S.

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[5] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[6] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[7] As in the analysis of aggregate data, I coded voter identification requirements for each respondent's state of residence on a scale of one to five, with one representing the least demanding requirement (stating one's name) and five representing the most demanding requirement (photo identification or affidavit).

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes).[8] Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which

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[7] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[8] Asian-Americans are included in the "other non-white races" category. In response to a request from officials at the U.S. Election Assistance Commission who had read an earlier version of this paper and were curious about the experiences of Asian-Americans, I ran models using Asian-Americans as a separate category in addition to the models presented here. Voter identification requirements did not have a statistically significant effect on whether Asian-American voters said they turned out in the 2004 election.

calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[9] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 0.912 for stating one's name to 0.887 for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of .025, or 2.5 percent, across the five types of identification.[10] When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it

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[9] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[10] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of <u>all</u> citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest, omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[11] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of Black/Non-Hispanics voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent when the maximum requirement was stating one's name, and the probability dropped 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Breaking down the 18- to 24-year-old age group by race shed additional light on the effects of voter identification requirements on specific groups.

[Table 8 here]

The gap in predicted probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out was 9.2 percent when the identification requirements varied from stating one's name to providing photo identification. The gap was 7.8 percent when taking into account the minimum requirements. The effects of maximum voter identification requirements also were statistically significant for African-Americans in the 18- to 24-year-old age group, with a gap in

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[11] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

the predicted probability of voting of 10.6 percent. Maximum and minimum voter identification requirements were not a significant predictor of voting among Hispanics ages 18 to 24.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[12]

[Table 9 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements). Given that political discourse about voter identification requirements includes concerns about the effects of the requirements on poor and minority voters, I also ran probit analyses for sub-samples of white and minority voters who fell below the poverty line. The voter identification requirements did not exert statistically significant effects on turnout among poor White/Non-Hispanic and Hispanic voters, but did have a significant effect on Black/Non-Hispanic voters who were below the poverty line.[13] Allowing the maximum voting requirement to vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 10 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

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[12] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

[13] The lack of significant effects for poor Hispanic voters is in contrast to the results from the aggregate data analysis. The sub-sample of poor Hispanic voters was small (n = 491), which may have contributed to the lack of statistical significance.

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit. African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters. The effects on African-American voters were pronounced for two specific sub-samples: African-American voters living below the poverty line and those in the 18- to 24-year-old age group. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[14] Or, do the requirements result in some voters

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[14] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not

being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.6 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.69	0.02
Voter ID requirements	-0.01**	0.003	-0.03**	0.004
Battleground State	0.04*	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.48**	0.03	0.50**	0.03
% African-American	0.05**	0.01	0.06	0.03
% Hispanic	-0.02	0.01	-0.13**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8638.0		-8651.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		**Model with Interactions**	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.63	0.02	0.66	0.02
Voter ID requirements	-0.009	0.005	-0.02**	0.006
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.48**	0.03	0.48**	0.03
% African-American	0.05**	0.01	0.04	0.03
% Hispanic	-0.12	0.01	-0.13**	0.04
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	0.01	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8630.8		-8620.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		Minimum requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05* p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model

	Maximum requirement	Minimum requirement
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White/Non-Hispanic voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	**Minimum requirements**	**Maximum requirements**	**Minimum requirements**	**Minimum requirements**	**Minimum requirements**
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.795	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 8. Predicted probability of voter turnout – Age groups by race

	White/Non-Hispanic 18 - 24		Black/Non-Hispanic 18 – 24
	Maximum requirements	**Minimum requirements**	**Maximum requirements**
State name	0.844	0.836	0.899
Sign name	0.823	0.818	0.877
Match signature	0.801	0.799	0.852
Non-photo ID	0.777	0.779	0.824
Photo ID	0.752	----	0.793
Affidavit	----	0.758	----
Total difference – lowest to highest	0.092	0.078	0.106
N	3,814		562

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Minimum voter identification requirements were not a significant predictor of voting for Black/Non-Hispanic voters ages 18 to 24. Maximum and minimum voter identification requirements were not a significant predictor of voting for Hispanic voters ages 18 to 24.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – Voters above and below the poverty line

	All voters above the poverty line		All voters below the poverty line	Black/Non-Hispanic voters below the poverty line
	Maximum requirement	Minimum requirement	Minimum requirement	Maximum requirement
State name	0.920	0.922	0.784	0.833
Sign name	0.915	0.915	0.772	0.816
Match signature	0.909	0.907	0.758	0.798
Non-photo ID	0.903	0.899	0.745	0.778
Photo ID	0.897	----	----	0.758
Affidavit	----	0.891	0.731	
Total difference from lowest to highest	0.023	0.031	0.053	0.075
N	49,935		5,038	1,204

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for white and Hispanic voters who were below the poverty line. Minimum voter identification requirements were not a significant predictor of voting for Black voters below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 10. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Aletha Barrington/CONTRACTOR/EAC/GOV
05/04/2006 04:36 PM

To [redacted]
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Conference Call/ Eagleton Institute

Good afternoon everyone,

This is to inform you of a time set-up for the conference call on May 11, 2006 regarding Eagleton Institute/Voter Identification Research Project: it will be at 11:30 am, if everyone is available for this time then its a go, if not please contact me at your earliest convenience.

Thanks!

Aletha Barrington
Contracts Assistant
U.S. Election Assistance Commission
(202) 566-2209 (office)
(202) 566-3128 (fax)

"Adam Berinsky"
[redacted]
05/03/2006 05:31 PM

To klynndyson@eac.gov
cc
bcc
Subject Re: Review of EAC research on Voter Identification

History: This message has been replied to.

I just got your phone message. I will still do the review, but I should note that I wont be able to do a full 90 minute phone call on the 11th -- perhaps we could schedule 30 minutes or so for me to be on the phone call.

At 05:36 PM 5/1/2006, you wrote:

> Dr. Berinsky-
>
> On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paperâ€™s findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:
>
> ℜ• The research methodology which was used to support the paperâ€™s conclusions
>
> ℜ• The specific statistical applications which were used to analyze the data and arrive at various conclusions
>
> If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.
>
> On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagletonâ€™s peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EACâ€™s Board of Advisors and Standards Boards in late May.
>
> While we are unable to offer financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
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Adam J. Berinsky
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Web Page: http://web.mit.edu/berinsky/www/

"Tom O'neill"
[redacted]
05/03/2006 03:29 PM

To klynndyson@eac.gov
cc
bcc
Subject May 11 teleconference

Karen,

Do you have a time for the May 11 teleconference? We're working to arrange the participation of members of our Peer Review Group and that is the key missing piece of information.

Thanks,

Tom O'Neill

Juliet E. Thompson-Hodgkins/EAC/GOV
05/01/2006 04:49 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: E-mail to Voter ID peer reviewers

I am concerned about the statement that EAC policy precludes us paying them. It is an issue of correctly soliciting and entering into a contract for the procurement of services. Perhaps there is a better way to phrase this, or is it even necessary

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
05/01/2006 02:58 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc
Subject E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV
05/01/2006 04:07 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: E-mail to Voter ID peer reviewers

Then we are good to good

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 03:03 PM
To: Thomas Wilkey
Cc: Juliet Thompson-Hodgkins
Subject: Re: E-mail to Voter ID peer reviewers

It's my understanding that Julie thinks we are " good to go" as long as we don't pay them.

Correct?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc
Subject Re: E-mail to Voter ID peer reviewers

Did we resolve the contact issues on this?

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 02:58 PM
To: Thomas Wilkey; Juliet Thompson-Hodgkins
Subject: E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

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While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Juliet E. Thompson-Hodgkins/EAC/GOV

05/01/2006 03:56 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: E-mail to Voter ID peer reviewers

As long as we don't pay them, there is no contract issue.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"Tom O'neill"
[redacted]
05/01/2006 02:10 PM

To klynndyson@eac.gov
cc
bcc
Subject Hamilton Crown Plaza

History: This message has been replied to.

Karen,

I tried to reserve a room at the Hamilton Crown Plaza for the night of May 23, but found that nothing was available. Has EAC reserved a block of room for that evening? If so, can 2 of those be made available to the Rutgers-Moritz team in connection with our presentation to the advisory boards?

Tom O'Neill

"Tom O'neill"
<[redacted]t>
04/26/2006 05:10 PM

To klynndyson@eac.gov
cc [redacted]
bcc
Subject Schedule for completion of Prov. Voting and Voter ID research

History: This message has been replied to.

Karen,

John and I reviewed your recent email today, and he asked me to respond.

Important to us is a clear commitment now by the EAC to schedule a presentation of our Voter ID research at the May meeting of the Advisory Board, if its review is required before the paper is published and presented at the EAC's public meeting in June. Your email made no mention of that June public meeting. Our schedule (submitted with the request for the no-cost extension) –and our previous discussion with you—treats that meeting as the key event that will conclude our research under this contract. Therefore, we also look for an explicit understanding that a presentation of our reports will be included in the agenda for that public meeting.

We can deliver a final report on Provisional Voting by May 5 and will be prepared for whatever role we might play at the May 24 meeting of the Advisory Board.

The team is looking forward to a discussion of Tim Vercellotti's revised statistical analysis of Voter ID with the academic reviewers you are in the process of identifying during the week of May 8. Knowing the specific date and time of that discussion in the next day or so would facilitate the participation of appropriate members of our Peer Review Group in that conversation.

Tom O'Neill

From:* klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, April 25, 2006 12:09 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Eagleton/Moritz Next Steps

John and Tom-

A couple of items related to timing over the next several weeks:

1. Is it possible to get your final report on Provisional Voting by COB May 5? If so, I can get this to the four Commissioners for final review and approval. It will then be ready to present to the EAC Board of Advisors and Standards Board at the May 24 meeting.

2. As we discussed I have been working to identify a small group of academics(three or so) who will be available to review the Voter ID paper the week of May 8. The focus of the review will be on Tim's research methodology and statistical analysis. I am fairly certain that this review can be done via conference call , preferably on May 11 or May 12. This would assume each of the reviewers will have spent

time reviewing the paper, taking extensive notes and summarizing his or her comments. I expect that you all, Tim, Mike Alvarez and any others from your peer review panel, who have an expertise in research and statistics, will be available for the conference call, as well?

3. While I expect you will be able to have your final Voter ID paper to me sometime during the week of May 15, it is not clear whether or not the paper will be presented to the EAC Standards and Advisory Boards the following week. As you know, the paper contains some controversial information, so the Commissioners may elect to spend additional time reviewing the findings among themselves, and before it is formally presented to our Boards.

Let me know if this schedule works for you all.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart"
[redacted]>
04/26/2006 04:19 PM
Please respond to
[redacted]

To [redacted]
cc klynndyson@eac.gov
bcc
Subject Re: No-Cost Extension Request

Tamar - Do you know if this request can be approved by this Friday. If that is possible, it would greatly ease our internal path at Rutgers.
Thanks, John

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

tnedzar@eac.gov wrote:

>
> Mr. Weingart,
>
> Just sent the form again. Please let me know if you do not receive it
> today.
>
> Thanks,
>
> Tamar Nedzar
> Law Clerk
> U.S. Election Assistance Commission
> 1225 New York Avenue, NW Suite 1100
> Washington, DC 20005
> (202) 566-2377
> http://www.eac.gov
> TNedzar@eac.gov
>
>
> *"John Weingart" [redacted]
>
> 04/21/2006 04:47 PM
> Please respond to
> [redacted]
>
>
>
> To
>   tnedzar@eac.gov
> cc
>
> Subject
>   Re: No-Cost Extension Request
>
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>

>
>
> Not yet received. Please send again with a cover sheet with my name to
> (732) 932-6778. Thanks.
>
> -- John Weingart, Associate Director
> Eagleton Institute of Politics
> (732)932-9384, x.290
>
>
>
>
> tnedzar@eac.gov wrote:
>
> >
> > Mr. Weingart,
> >
> > I just faxed the document we need you to sign before our Executive
> > Director can approve the no-cost extension.
> >
> > Please call if you have any questions.
> >
> > Thank you,
> >
> > Tamar Nedzar
> > Law Clerk
> > U.S. Election Assistance Commission
> > 1225 New York Avenue, NW Suite 1100
> > Washington, DC 20005
> > (202) 566-2377
> > http://www.eac.gov
> > TNedzar@eac.gov
> >
> >
> > *Karen Lynn-Dyson/EAC/GOV*
> >
> > 04/21/2006 10:10 AM
> >
> >
> > To
> > john.weingart@rutgers.edu
> > cc
> > "Tom O'Neill" [redacted]>
> > Subject
> > Re: No-Cost Extension RequestLink
> >
> > <
Notes:///85256FFC007A9D7C/38D46BF5E8F08834852564B500129B2C/CFBC950B4682EC0E862
57157004C6064>
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> >
> > Thanks, John.
> >

> > I'm passing this on to our legal staff , who will be preparing the
> > documents.
> >
> > Will let you know if I need additional information and/or clarification.
> >
> > Regards-
> > Karen Lynn-Dyson
> > Research Manager
> > U.S. Election Assistance Commission
> > 1225 New York Avenue , NW Suite 1100
> > Washington, DC 20005
> > tel:202-566-3123
> >
> >
> >
> > *"John Weingart" [redacted]*
> >
> > 04/21/2006 09:52 AM
> > Please respond to
> > [redacted]
> >
> >
> >
> > To
> > klynndyson@eac.gov
> > cc
> > "Tom O'Neill" <[redacted]t>
> > Subject
> > No-Cost Extension Request
> >
> >
> >
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> >
> >
> > Karen - We are requesting a no-cost extension on the EAC contract to the
> > Eagleton Institute of Politics at Rutgers University to have the
> > contract's concluding date move from March 31, 2006 to June 30, 2006. As
> > I indicated earlier, it would be very helpful if we could receive
> > approval of this request no later than April 28th.
> >
> > This extension is necessary to enable the following activities:
> >
> > 1. The EAC has informed us that it will assemble a panel of researchers
> > the week of May 8th to review the Eagleton/Moritz draft background
> > report on Voter Identification. The EAC wishes to supplement the review
> > of this draft
> > already conducted by the Peer Review Group called for in the contract.
> > The Eagleton/Moritz research team, as well as at least some of the Peer
> > Review Group will participate in the conference call or meeting of the
> > EAC's reviewers;
> >
> > 2. Eagleton/Moritz will revise the draft Voter Identification report
> > based upon comments made by the two sets of reviewers, and distribute
> > the revised report to the EAC and its Advisory Board in mid-May.
> >
> > 3. Eagleton/Moritz will present its draft reports on Provisional Voting
> > and Voter Idenfitication to the EAC Advisory Board at its May 25th

> > meeting in Washington, D.C.;
> >
> > 4. Eagleton/Moritz will revise both draft reports to take into account comments made by the EAC Advisory Board, and submit printed final reports to the EAC before June 23rd. Eagleton/Moritz will also prepare a PowerPoint presentation for both reports.
> >
> > 5. Eagleton/Moritz will present both reports at the EAC public meeting in Washington, D.C. on June 23rd, thus concluding its work under this contract.
> >
> > Please let me know if you need any additional information.
> >
> > Thanks,
> >
> > John
> >
> > --
> > -- John Weingart, Associate Director
> > Eagleton Institute of Politics
> > (732)932-9384, x.290
> >
> >
> >
> >
> >
>
>

Tamar Nedzar/EAC/GOV
04/21/2006 03:30 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Fw: No-Cost Extension Request

History: This message has been forwarded.

Ooops. Here's the attachment.

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

Rutgers Memo.rtf
----- Forwarded by Tamar Nedzar/EAC/GOV on 04/21/2006 03:28 PM -----

Tamar Nedzar/EAC/GOV
04/21/2006 03:13 PM

To Karen Lynn-Dyson/EAC/GOV
cc
Subject Re: No-Cost Extension Request

Hey Karen,

Once John signs and faxes back the document, we need to get it to Tom with the memo to file (attached) for his signature. I believe that is all we need to do for the no-cost modification.

Thanks,

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
04/21/2006 10:10 AM

To john.weingart@rutgers.edu
cc "Tom O'Neill" <[redacted]>
Subject Re: No-Cost Extension Request

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

To: File
From: Tamar Nedzar, Law Clerk
Date: April 21, 2006
Re: No-Cost Extension to contract number E4014127 with the Eagleton Institute of Politics at Rutgers University

---

Background:
Contract E4014127 with the Eagleton Institute of Politics at Rutgers University ("contractor") was originally scheduled to be concluded on March 31, 2006. The contract's final products include a report on Voter Identification and a report on Provisional Voting. The contractor has vetted the reports with a Peer Review Group, pursuant to the terms of the contract.

Justification for No-Cost Extension:
The EAC wishes to supplement the contractor's Peer Review of the reports by adding another review process with some of the EAC's key stakeholders. The EAC proposes to assemble a panel of researchers during the week of May 8th to conduct the second review.

Following the second review, the contractor will revise its draft reports based on the comments it receives. The contractor will present its draft reports on Provisional Voting and Voter Identification to the EAC Advisory Board at its May 25th meeting in Washington, DC. The contractor will revise both draft reports, taking into account the EAC's Advisory Board's comments and submit the final reports to the EAC toward the end of June.

Recommendation:
The EAC recommends that contract E4014127 be modified at no cost to allow the contractor to complete their work by June 30, 2006.

Thanks, John.

I'm passing this on to our legal staff , who will be preparing the documents.

Will let you know if I need additional information and/or clarification.

Regards-
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
04/21/2006 09:52 AM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'Neill" [redacted]
Subject No-Cost Extension Request

Karen - We are requesting a no-cost extension on the EAC contract to the Eagleton Institute of Politics at Rutgers University to have the contract's concluding date move from March 31, 2006 to June 30, 2006. As I indicated earlier, it would be very helpful if we could receive approval of this request no later than April 28th.

This extension is necessary to enable the following activities:

1. The EAC has informed us that it will assemble a panel of researchers the week of May 8th to review the Eagleton/Moritz draft background report on Voter Identification. The EAC wishes to supplement the review of this draft
already conducted by the Peer Review Group called for in the contract. The Eagleton/Moritz research team, as well as at least some of the Peer Review Group will participate in the conference call or meeting of the EAC's reviewers;

2. Eagleton/Moritz will revise the draft Voter Identification report based upon comments made by the two sets of reviewers, and distribute the revised report to the EAC and its Advisory Board in mid-May.

3. Eagleton/Moritz will present its draft reports on Provisional Voting and Voter Idenfitication to the EAC Advisory Board at its May 25th meeting in Washington, D.C.;

4. Eagleton/Moritz will revise both draft reports to take into account comments made by the EAC Advisory Board, and submit printed final reports to the EAC before June 23rd. Eagleton/Moritz will also prepare a PowerPoint presentation for both reports.

5. Eagleton/Moritz will present both reports at the EAC public meeting

in Washington, D.C. on June 23rd, thus concluding its work under this contract.

Please let me know if you need any additional information.

Thanks,

John

--
-- John Weingart, Associate Director
   Eagleton Institute of Politics
   (732)932-9384, x.290

"John Weingart"
<john.weingart@rutgers.edu>
04/19/2006 05:25 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
bcc
Subject Re: No cost extension paperwork

History: This message has been replied to.

Karen - Great. Can the no-cost request just be in the form of an email from me to you or do you need something more formal?

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> Hi John-
>
> As with the last no-cost extension request, I'll need a brief
> memo/statement outlining why you are making the request for the
> extension. Included in the narrative should be statement about which
> tasks have not been completed and why.
>
> I'm pressing ahead with the timeline we discussed last week. I think
> a May 5 teleconference may be too ambitious- I think it may be more
> likely that we'll get peer review comments during the week of May 8.
>
> Other than that I think it's doable.
>
> Thanks, as always, for your work.
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
>
>
> *"John Weingart" <john.weingart@rutgers.edu>*
>
> 04/19/2006 11:48 AM
> Please respond to
> john.weingart@rutgers.edu
>
>
>
> To
> klynndyson@eac.gov
> cc
>
> Subject

> Re: No cost extension paperwork
>
>
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>
>
>
> Ok. It would be very helpful to us to get that done before the end of
> April. When do you think you'll be able to get back to us about the
> schedule for completing the project we discussed last week?
>
> -- John Weingart, Associate Director
> Eagleton Institute of Politics
> (732)932-9384, x.290
>
>
>
>
> klynndyson@eac.gov wrote:
>
> >
> > John-
> >
> > One of our law clerks, Tamar Nedzar, is working with me on the
> > paperwork for your no-cost extension.
> >
> > She will be in touch with you this week, to determine the additional
> > information/documentation she may need to process a request for a
> > no-cost extension through June 30, 2006.
> >
> > Thanks
> >
> > Karen Lynn-Dyson
> > Research Manager
> > U.S. Election Assistance Commission
> > 1225 New York Avenue , NW Suite 1100
> > Washington, DC 20005
> > tel:202-566-3123
>
>
>

"Tom O'neill"
<[redacted]>
04/14/2006 12:50 PM

To klynndyson@eac.gov
cc [redacted], john.weingart@rutgers.edu
bcc
Subject March Progress Report

History: This message has been forwarded.

Karen,

Attached is the Progress Report for March. I think our conversation earlier this week laid out a clear path to a successful conclusion of the project.

Tom O'Neill

Progress ReportMarch06.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
March 2006

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

April 14, 2006

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
  - Task 3.7
  - Task 3.8
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from March 1 through March 31, 2006. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In March we revisited our research on Provisional Voting to respond to a question from the EAC's Executive Director. We found that the longer the time provided to evaluate provisional ballots, the greater the percentage that are counted. Based on the comments of the Peer Review Group, we revised our statistical analysis of the effects of voter ID requirements on turnout and distributed the revised draft to the PRG again. We received further comments from three PRG members, who expressed confidence in the analysis. Their comments are now reflected in the latest draft, as presented to the EAC on April 3.

We polished the draft report on Voter ID issues based on preliminary comments by the EAC. The results of that revision were incorporated in the briefing we prepared for delivery on April 3 to the EAC Commissioners in Washington. That meeting had originally been envisioned as a Closeout Conference. While we have met the schedule provided under the no-cost extension to the contract, the EAC has requested that we take additional time to revise the Voter ID report based on comments at the April meeting, arrange another meeting of the PRG, and, perhaps, undertake additional research on Voter ID over time. As this report is being prepared, we are exploring those options.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting. Please direct questions or comments about this report to [redacted]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. We received comments on the November draft report in a teleconference on February 22 with EAC Executive Director Tom Wilkey and Contract Manager Karen Lynn-Dyson. We are now revising and polishing the draft in accord with many of the comments by the Commissioners.

We have analyzed the effect of the different time periods for the evaluation of provisional ballots established by the states on the percentage of provisional ballots that end up being counted. The results indicate that longer time periods result in more ballots being counted. That finding will be incorporated in the revised, final draft report.

Time period	Number of States	% PB Counted
< 1 week	14	35.4%
1 – 2 weeks	15	47.1%
> 2 weeks	14	60.8%

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. The EAC has accepted that recommendation. Our final report will include recommendations for promulgation by the Commission as "Best Practices," but will not include a proposed "Guidance Document," referred to in Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance).

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is now the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has completed the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. The results of its work constitutes the compendium of legislation, administrative regulations, and case law called for under this task. This month the Moritz team reviewed state statutes and regulations on the time period allowed for the evaluation of provisional ballots. Its report provided the basis for the statistical analysis of the effect of greater time on the number of ballots counted.

Description: The Moritz team has compiled statutes on Voter Identification, and has provided a summary analysis of its research, including litigation, included in the draft of the Voter ID paper that has now been reviewed by the Peer Review Group.

Progress: The review of current voter identification litigation nationwide is now included in the draft report.

Work Plan: In the remaining month of the project, Moritz and Eagleton will continue to work together to develop best practices in the area of voter identification, based on our combined research and the case law.

RESEARCH EFFORTS

We continue to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification. The table displaying this data is challenging to complete.

VOTER ID AND TURNOUT ANALYSIS

We revised the analysis of the effect of different voter ID requirements on turnout following the meeting of the PRG in February. The revision was distributed to the PRG in March, and 3 members of the PRG commented on the revision at the end of the month. They pointed to a few areas to clarify the analysis and expressed overall confidence in the quality of the work.

Description: The analysis suggests that more stringent voter ID requirements reduce turnout by several percentage points. We reviewed the analysis, looking at participation compared to both the Voting Age Population and the Citizen Voting Age population.

Progress: The PRG review strengthened the analysis. We have incorporated the results in the revised draft of our report, as distributed to the EAC for the April 3 meeting. It is summarized in the PowerPoint presentation prepared in March for the April meeting.

Challenges: The models we are using, while sophisticated, are difficult to run and interpret. The analyses are time-consuming. The PRG's counsel has assisted in meeting this challenge.

Work Plan: We completed a draft of the Voter ID report for the EAC in March. Based on the EAC's comments at the April meeting, we are revising the paper once again for the final report.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: With its meeting to review the Voter ID paper, the PRG completed its work on this project. Several members of the PRG did comment on the revised statistical analysis of voter turnout. Members may be called together again for a review of our final revision, if changes to the schedule are approved by the EAC.

Challenges: No new challenges were encountered.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

As agreed in a telephone conversation with Karen Lynn-Dyson on April 13th, a detail of expenses incurred from the project during March and April will be sent under separate cover in early May to Ms. Dianna Scott, Administrative Officer at the EAC.

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to <u>actual expenses</u> that have been incurred during the reporting period. The contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

"John Weingart"
<john.weingart@rutgers.edu>
04/10/2006 12:33 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc [redacted]
bcc
Subject Re: Eagleton/Moritz Next Steps

History: This message has been replied to.

Karen - Tom and I are both available this Wednesday or Thursday between 3:15 and 5:00. Any time in there work for you?

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

\>
\> Will wait to hear from you.
\>
\> Best-
\> Karen Lynn-Dyson
\> Research Manager
\> U.S. Election Assistance Commission
\> 1225 New York Avenue , NW Suite 1100
\> Washington, DC 20005
\> tel:202-566-3123

"John Weingart"
<john.weingart@rutgers.edu>
04/07/2006 05:11 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc [redacted]
bcc
Subject Re: Eagleton/Moritz February Report

History: This message has been replied to.

That time doesn't work for me. I will compare calendars with Tom and propose a few times that work for both of us.

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> Shall we have a call on Wednesday, April 12 at 1:00?
>
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

"Tim Vercellotti"
<tim.vercellotti@rutgers.edu>

04/06/2006 04:42 PM

Please respond to
tim.vercellotti@rutgers.edu

To klynndyson@eac.gov

cc [redacted]

bcc

Subject Information requested by Commissioner Hillman

History: This message has been replied to.

Karen:

It was good to meet with you, your colleagues, and the commissioners on Monday. The feedback has been very helpful as I revise my part of the voter identification study.

Commissioner Hillman asked during and after the meeting for some information from the Current Population Survey. She was curious about the percentage of non-citizens who said they were registered to vote, and the percentage of non-citizens who said they voted in the 2004 election.

I've looked at the questionnaire and the data. The question about citizenship preceded the questions about registration and voting in the survey. If a respondent said she or he was not a citizen of the United States, the respondent did not receive the questions on registration and voting. So, at least from this data set, I cannot discern the percentage of non-citizens who claimed to be registered or to have voted. (That would be fascinating information, indeed.)

Best regards,

Tim Vercellotti

--

Tim Vercellotti, Ph.D.
Assistant Research Professor
Assistant Director, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 285
Fax: (732) 932-1551

"Mike Alvarez"
<rma@hss.caltech.edu>
04/05/2006 07:39 PM

To klynndyson@eac.gov
cc
bcc
Subject

History: This message has been replied to and forwarded.

Hi -- nice to meet you in person, finally!

And thanks for inviting me to your gathering, I enjoyed it and hope I was helpful. Of course, any time you want anything, you do know where to track me down.

As to the potential reviewers of the Eagleton Voter ID study, here are my suggestions, in order:
Jonathan Nagler, New York University
Jan Leighley, University of Arizona
Ben Highton, UC-Davis
Adam Berinsky, MIT
Bernard Grofman, UC-Irvine

All have worked with the CPS turnout/registration data, and are very familiar with this research literature.

If these don't work, or you want more recommendations, let me know.

--
****
R. Michael Alvarez (O)
626-395-4089
Professor of Political Science (F)
626-405-9841
Caltech/MIT Voting Technology Project
California Institute of Technology
Pasadena, CA 91125
rma@hss.caltech.edu

Contributor to Election Updates,
http://electionupdates.caltech.edu/blog.html
****

"Tom O'neill"
[redacted]
04/02/2006 11:58 AM

To klynndyson@eac.gov
cc
bcc
Subject Powerpoint presentation for EAC

History: This message has been forwarded.

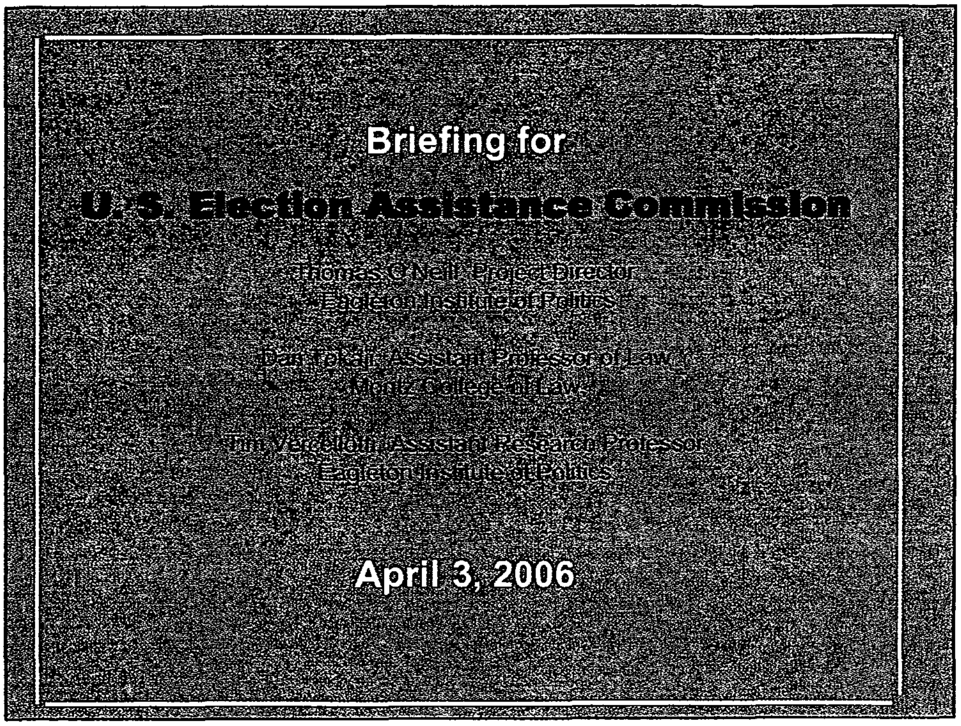
Karen,

Attached is the Powerpoint presentation we will use as the basis for our presentation tomorrow. I will be bringing a copy on a portable drive to install on the computer to be used for the presentation, but thought it might be convenient to have a copy in advance that you could review and that might be loaded onto the presentation computer before we arrive.

See you about 11. Hope you're having (had?) a good weekend.

Tom O'Neill

Briefinfg040306A.ppt



Briefing for

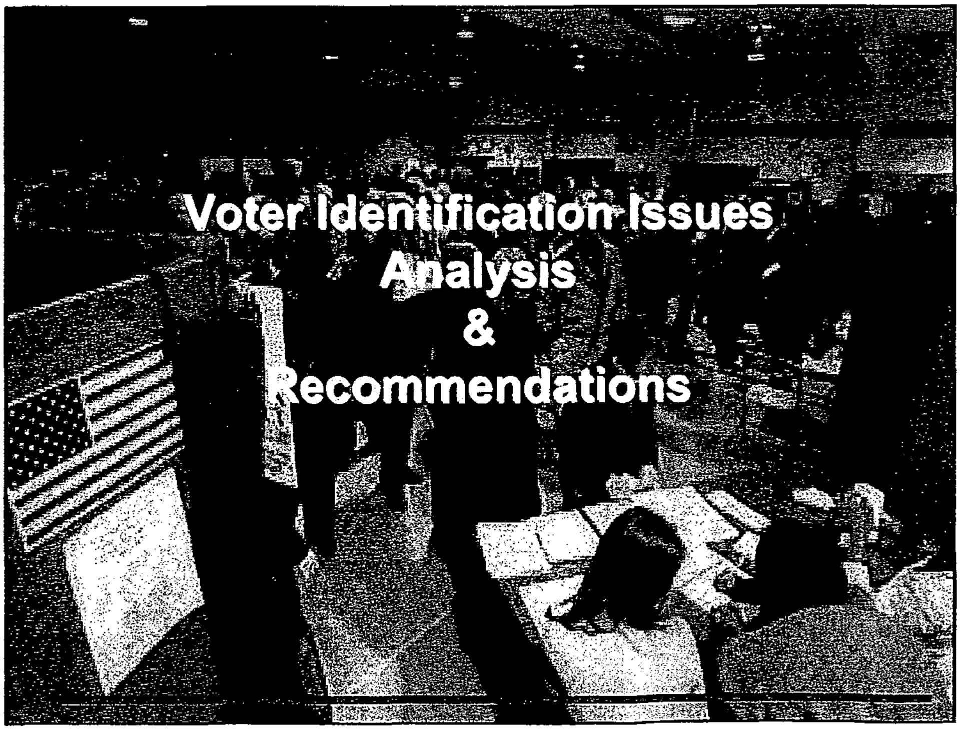
U. S. Election Assistance Commission

Thomas O'Neill, Project Director
Eagleton Institute of Politics

Dan Tokaji, Assistant Professor of Law
Moritz College of Law

Tim Vercellotti, Assistant Research Professor
Eagleton Institute of Politics

April 3, 2006



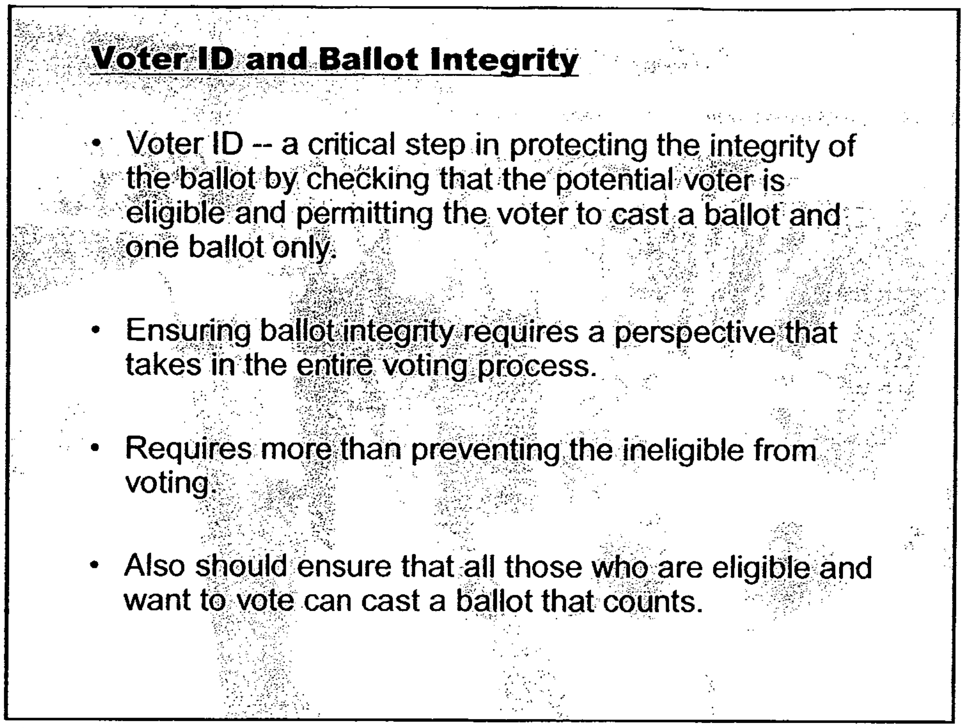
Voter Identification Issues Analysis & Recommendations

Analytic Tasks

- •Identify how voter ID requirements were implemented around the county to provide a baseline for consideration of other approaches
- •Diagnose the problems and challenges of voter ID and hypothesize alternative approaches.
- •Recommend alternative approaches
- •Identify appropriate policy objectives by which to assess alternative approaches to voter ID

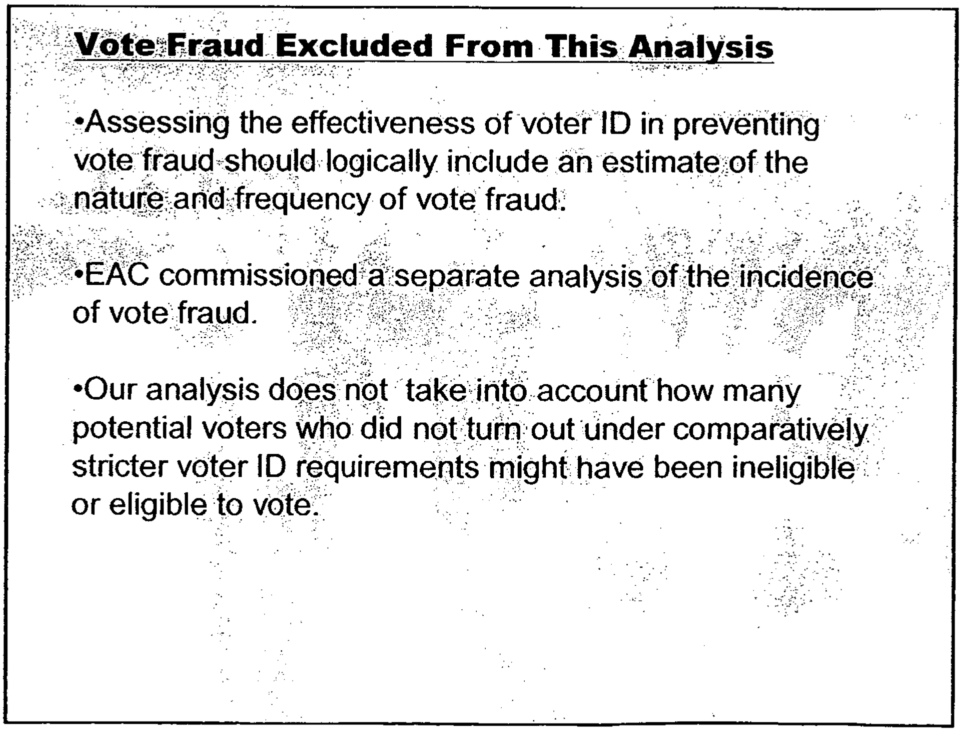
Focus

- •HAVA's narrow ID requirements drew attention to the issue and helped spark the current debate.
- •National debate now goes beyond HAVA to focus on stricter ID for all would-be voters
- •Therefore our work takes a broad view of the issue.



Voter ID and Ballot Integrity

- Voter ID -- a critical step in protecting the integrity of the ballot by checking that the potential voter is eligible and permitting the voter to cast a ballot and one ballot only.
- Ensuring ballot integrity requires a perspective that takes in the entire voting process.
- Requires more than preventing the ineligible from voting.
- Also should ensure that all those who are eligible and want to vote can cast a ballot that counts.

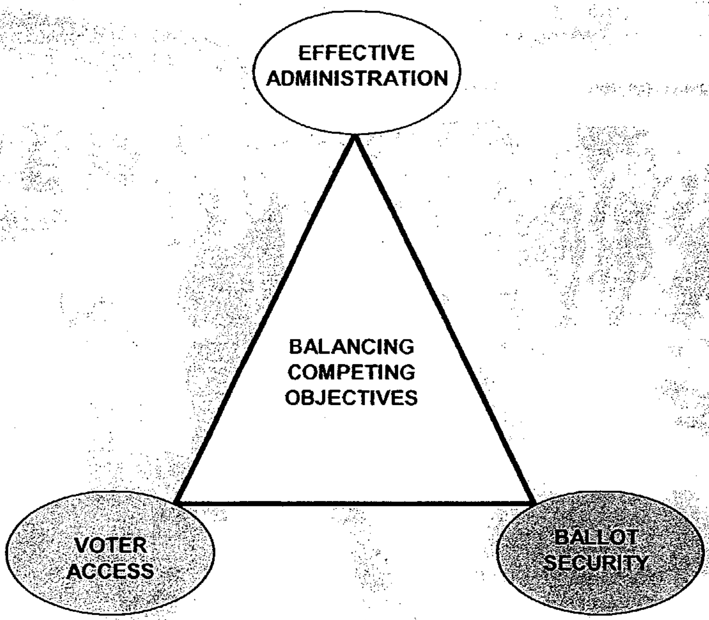


Vote Fraud Excluded From This Analysis

•Assessing the effectiveness of voter ID in preventing vote fraud should logically include an estimate of the nature and frequency of vote fraud.

•EAC commissioned a separate analysis of the incidence of vote fraud.

•Our analysis does not take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.



EFFECTIVE ADMINISTRATION

BALANCING COMPETING OBJECTIVES

VOTER ACCESS

BALLOT SECURITY

Method of analysis

- Collected and analyzed state statutes and regulations & classified states by their ID requirements in 2004.
- Tested the assumption that voter ID requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous.
- County-level turnout data and Current Population Survey results
- Analyzed litigation for trends in judicial decisions
- Revised our work based on comments of PRG

Categories of Voter ID in the states, 2004

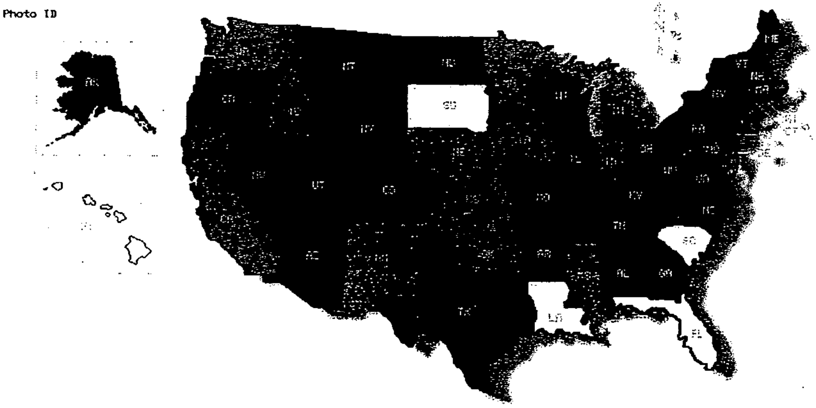
1. Give Name
2. Sign Name
3. Match Signature
4. Present ID

In 2004 no states required photo ID as the only ID to cast regular ballot.

May not reflect actual practice at the polling place.

● - Give Name
● - Sign Name
● - Match Signature
● - ID
- Photo ID

Voter ID Requirements 2004



3-27-06

Limitations of the data

- 2004 data do not permit conclusions about the effect of stricter photo ID laws such as those recently passed in Georgia and Indiana.
- The 5 states that required photo ID in 2004 allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

Analysis of Turnout and Voter ID Requirements

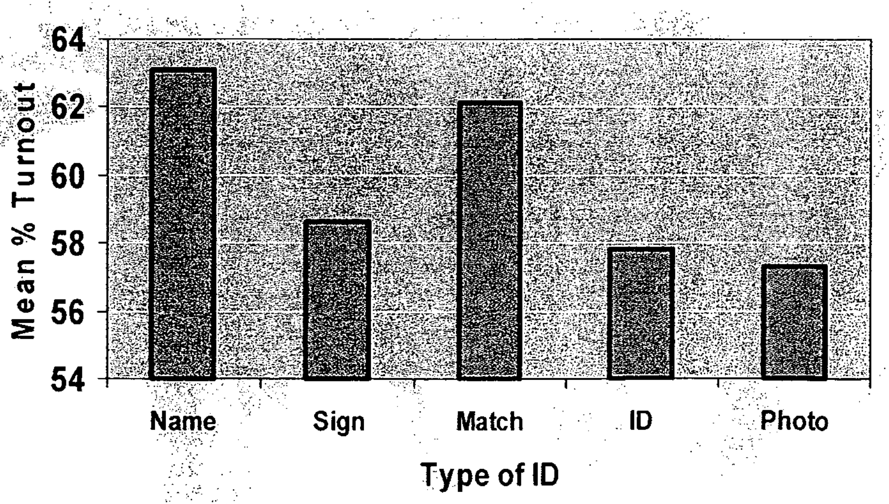
Tim Vercellotti

ID requirements affect turnout

Turnout declined with stricter voter ID requirements

- 63.1% of the voting age population turned out in states that required voters to state their names.
- 57.3% turned out in states that required photo ID.
- Including other factors beyond voter ID requirements diminishes the influence of voter ID on turnout.
- Reduction most noticeable in counties with many Hispanic residents or people below the poverty line.

State Voter ID and Turnout



Variation in Turnout Based on Voter ID Requirements

Maximum Requirement		*Minimum Requirement*	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	*Voter Identification Required in the States*	*Mean Voter Turnout for States in that Category*
State Name	**63.1 %**	*State Name*	***61.3 %***
Sign Name	**58.6 %**	*Sign Name*	***60.4 %***
Match Signature	**62.1 %**	*Match Signature*	***59.2 %***
Provide Non-Photo ID	**57.8 %**	*Provide Non-Photo ID*	***57.6 %***
Provide Photo ID	**57.3 %**	*Swear Affidavit*	***58.7 %***
Average Turnout (All States)	**59.6 %**		

Reports from the voters

- CPS in November 2004 asked respondents about their experience voting.
- Stricter ID requirements exert a negative effect on whether survey respondents said they voted.
- Decline from *Stating Name* to *Photo ID* was 2.5%.
- Small, negative effect persists when controlling for other variables, such as battleground state and demographics.

Effect of Stricter Voter ID requirements

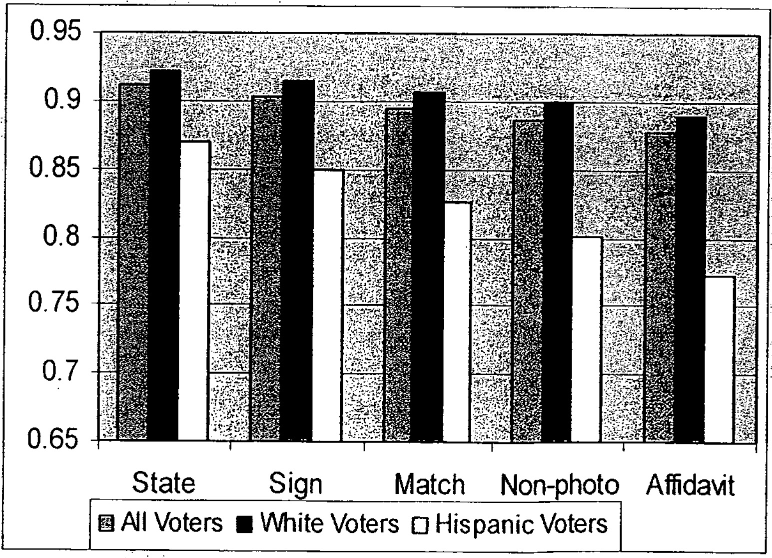
Significant reduction in probability of voting by:

- Hispanic Voters (minus 9.7%)
- Voters below the poverty line
- Voters with less than a high-school education (-7.4%)
- Young voters (18 -24)

No effect on the probability of voting by:

- African-American voters
- Voters with some college education

Voter Turnout By Minimum ID Requirement



Trends in Litigation

Dan Tokaji

Summary

- Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form.
- Laws requiring photo ID may not be upheld. In *Common Cause v. Billups* the court concluded that a photo ID requirement is likely unconstitutional.
- Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Rulings on Forms of ID

Non-photo ID

- *Colorado Common Cause v. Davidson,* Upheld requirement that all in-person voters show identification.

- *League of Women Voters v. Blackwell,* rejected a challenge to Ohio requirement that first-time mail-registrants provide HAVA-ID.

Photo ID

- Georgia and Indiana laws requiring photo ID have been challenged in court. In Georgia, the District Court enjoined application of photo ID requirement on constitutional grounds. In January, Georgia enacted a modified version of the law, on which the court has not yet ruled.

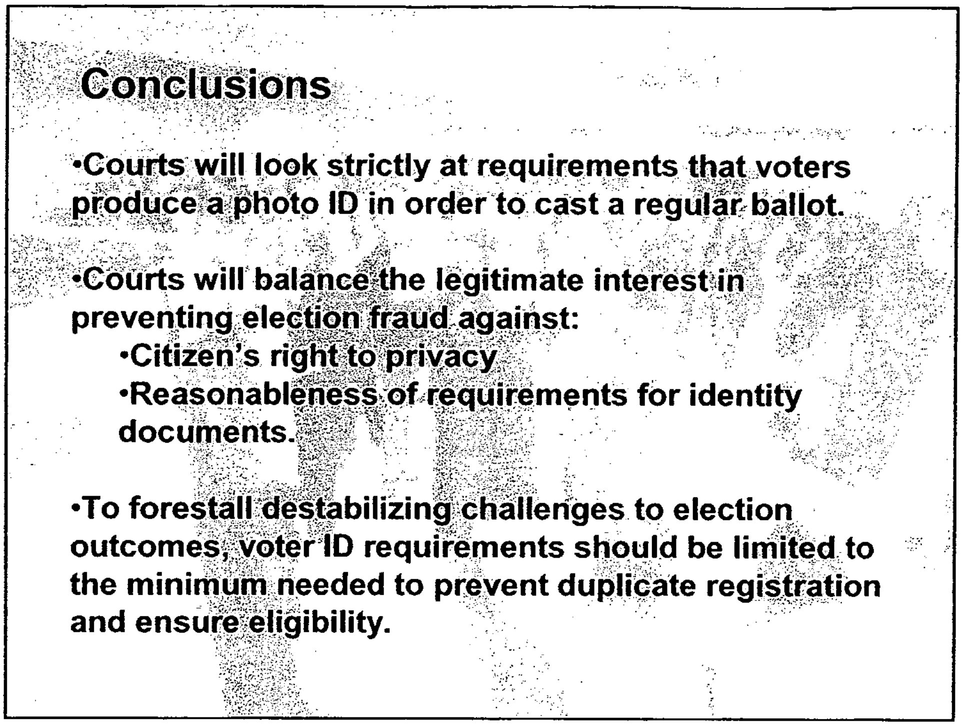
- *ACLU of Minnesota v. Kiffmeyer,* Enjoined Minnesota law that allowed the use of tribal photo ID cards only for an Indian who lived on the reservation. The decision indicates courts are likely to look strictly on photo ID requirements.

Privacy

- *Greidinger v. Davis*, (4th Cir. 1993), struck down on due process grounds a Virginia requirement that voters provide Social Security numbers to register. Public disclosure of the social security numbers was not necessary to prevent fraud.

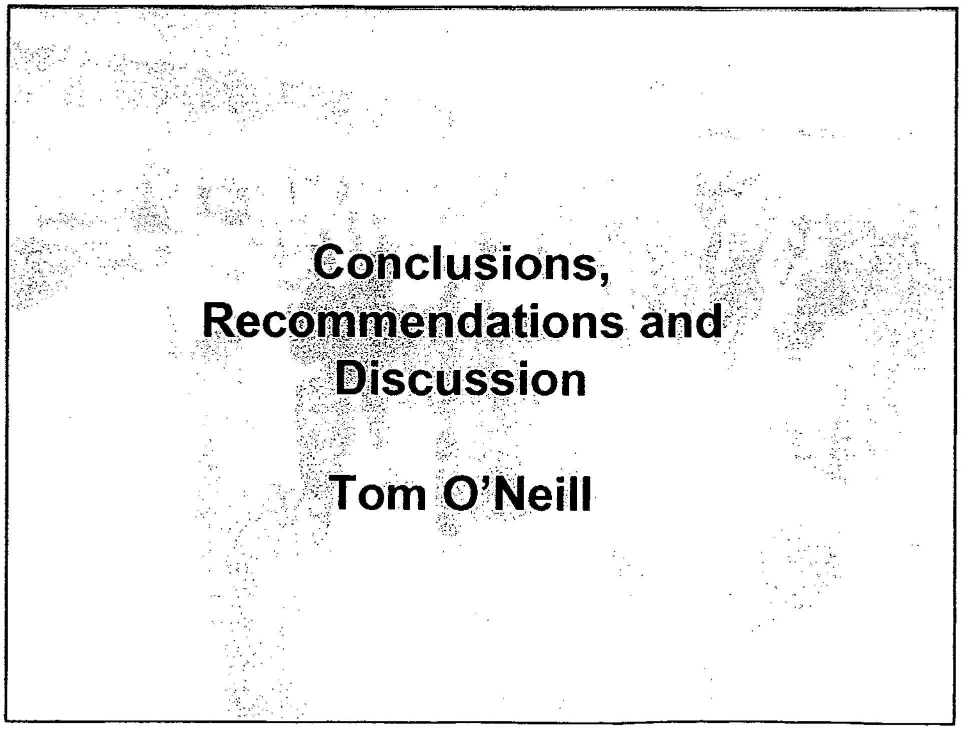
- BUT *McKay v. Thompson*, (6th Cir. 2000) rejected privacy challenges based to a Tennessee law requiring Social Security numbers for voter registration.

- NVRA permits requiring only the minimum information needed to prevent duplicate voter registration and determine eligibility. The distinction between the two cases appears to be between the use of Social Security numbers for internal purposes, which was deemed permissible, and the disclosure of those numbers to the public, which took place in Virginia.



Conclusions

- Courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot.
- Courts will balance the legitimate interest in preventing election fraud against:
  - Citizen's right to privacy
  - Reasonableness of requirements for identity documents.
- To forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.



Conclusions, Recommendations and Discussion

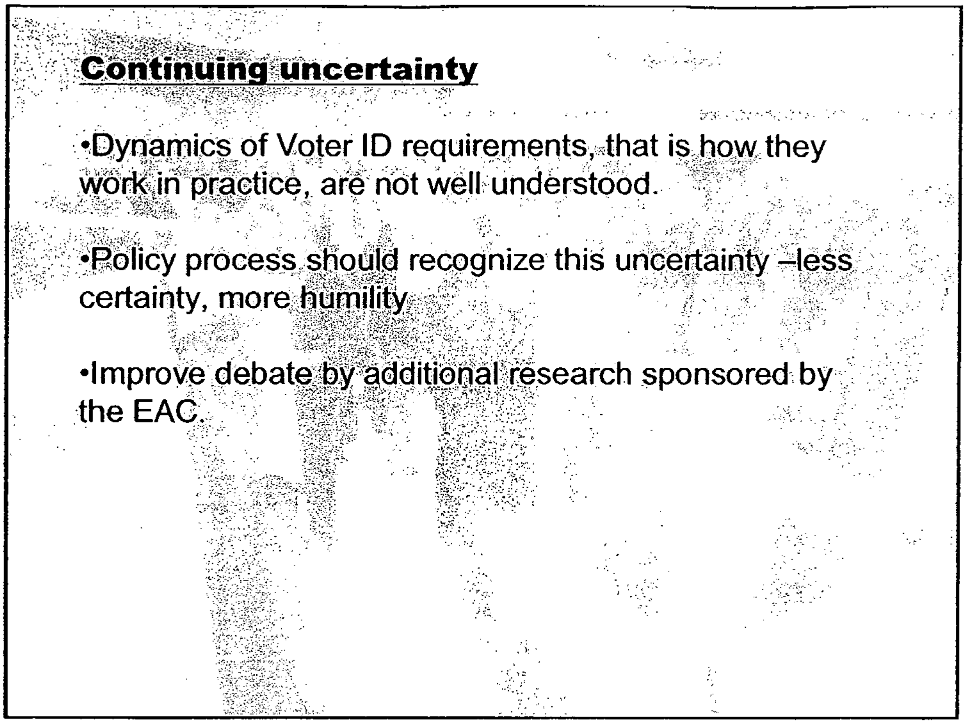
Tom O'Neill

Policy Perspective

If the ID requirements that block ineligible voters from the polls also prevent eligible voters from casting a ballot because they lack ID, the integrity of the ballot may not have been improved.

Policy Perspective Questions

- Are voter ID requirements based on valid studies of the incidence of the vote fraud they aim to prevent?
- Is the increase in ballot security promised by stricter ID requirements reasonably proportional to the cost, measured in both monetary and other terms?
- Can all citizens comply with the requirements easily?
- If a requirement is likely to reduce turnout of eligible voters, what steps can or will be taken to ameliorate the adverse consequences?
- Do the requirements have a neutral result on the composition of the qualified electorate?

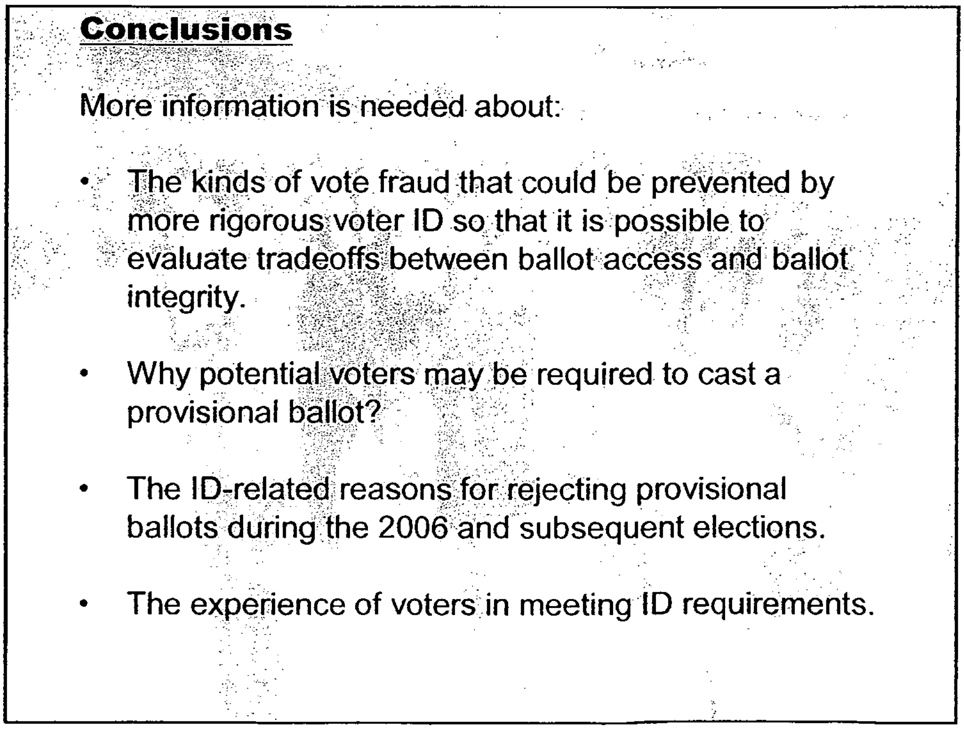


Continuing uncertainty

•Dynamics of Voter ID requirements, that is how they work in practice, are not well understood.

•Policy process should recognize this uncertainty –less certainty, more humility

•Improve debate by additional research sponsored by the EAC.



Conclusions

More information is needed about:

- The kinds of vote fraud that could be prevented by more rigorous voter ID so that it is possible to evaluate tradeoffs between ballot access and ballot integrity.
- Why potential voters may be required to cast a provisional ballot?
- The ID-related reasons for rejecting provisional ballots during the 2006 and subsequent elections.
- The experience of voters in meeting ID requirements.

The EAC should:

A. Recommend the publication of a "Voting Impact Statement" by states considering changing their voter ID requirements. It would estimate the number and demographics of

1. Eligible, potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and

2. Assess the number of ineligible voters who will be prevented from voting by stricter ID requirements.

The EAC should:

B. Encourage or require the states to:

1. Collect and report reliable, credible information on the relationship between ballot access and ballot security.

2. Survey provisional voters (anonymously) to determine why they were unable to cast a regular ballot.

3. Conduct pre-election polling to ask voters what they know about the voter ID requirements.

4. Examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. Consider 3 factors:
   a. Convenience of voters
   b. Total time allowed to evaluate ballots
   c. Safe harbor provision in presidential elections.

Time period	Number of States	% PB Counted
< 1 week	14	35.4%
1 – 2 weeks	15	47.1%
> 2 weeks	14	60.8%

C. Advise the states that to forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.

Briefing for

U. S. Election Assistance Commission

April 3, 2006

"John Weingart"
<Johnwein@rci.rutgers.edu>
04/01/2006 06:06 PM
Please respond to
John.Weingart@rutgers.edu

To klynndyson@eac.gov
cc
bcc
Subject Monday Meeting

Karen - I learned late Friday that I will not be able to attend Monday's meeting. My wife is recovering from abdominal surgery and is doing fine, but I need to take her back to visit the surgeon. I am very disappointed to miss the meeting, but know that our team will be well represented. Tom O'Neill will be leading a delegation that will include Dan Tokaji from Moritz, amd Ingrid Reed and Tim Vercellotti from Eagleton as well as our two most involved graduate students, Dave Andersen and John Harris. Tom and I will talk Monday evening or Tuesday and be able to quickly resolve any questions that cannot be fully resolved during the meetings.

One procedural item is that we clearly need another no-cost extension since our first one expired yesterday. Assuming the amount of revision the Commissioners request on Monday is relatively minimal, I assume we would be able to complete all remaining work during April and would, therefore, need another 30 days. Perhaps, to be on the safe side though, we should extend until the end of May. In any case, if you could let me or Tom know what we need to do to put that in motion, we will do so once we hear the Commissioners' comments on Monday.

Also, in response to the question you asked during the week, our hope is to submit one more invoice at the end of April for the remaining funds. Let me know if that works from your end.

Finally, one other procedural question is that several of the participants in this project are interested in writing papers for academic journals or conferences stemming from their work on this project. Are there any applicable restrictions, specific attribution requirements or other limits or provisions? I couldn't find anything in our contract with the EAC that addresses this matter one way or the other.

Thanks. Again, my apologies for missing the meeting.

--
John Weingart, Associate Director
Eagleton Institute of Politics
(732) 932-9384, x.290

--
John Weingart, Associate Director
Eagleton Institute of Politics
(732) 932-9384, x.290

"Tom O'neill"
[redacted]
03/31/2006 09:42 AM

To klynndyson@eac.gov
cc
bcc
Subject Revised Voter ID Paper

History: This message has been forwarded.

Karen,

Attached is a new draft of the Voter ID paper, revised to take into account the comments you gave us on Tuesday as well as some points raised recently by other reviewers. We'll be bringing hard copies of this draft with us to Monday's briefing. If you could distribute the new "Executive Summary" (pages 1 – 5) in advance to those who will take part in the meeting on Monday, I think the discussion would be improved.

Our train is scheduled to get into Union Station at 10:30 on Monday. Barring Amtrak delays, we should arrive at your offices shortly before 11.

Tom O'Neill

VoterIDReport0330.doc

FINAL DRAFT REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

This report to the United States Election Assistance Commission (EAC) presents an analysis of voter identification requirements across the country and makes recommendations for best practices to improve implementation of voter ID requirements at the polls. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

Executive Summary

Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. The five categories are progressively more rigorous based on the demands they make on both voters[1] (and, to some extent) on election workers. The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample,

---

[1] Even the most relaxed provisions for identification at the polls — anything stricter than the honor system used in North Dakota — will impose some burden on particular voters. *Harvard Law Review* 119:1146

which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents are not uniformly and conveniently available to all voters.

We collected data on turnout in all counties to permit an estimate of the relationship between the rigor of the ID requirements and the level of turnout. This aggregate analysis is useful, but does not provide valid estimates on the effects of different kinds of ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates.) To allow that analysis, we used the Census Bureau's Current Population Survey from November 2004, which asked a large sample of Americans about their experience in the election. It has the disadvantage of relying on self reports by respondents about their registration status, citizenship, and experience in the polling place, but it provides the demographic data needed to supplement the aggregate analysis.

To understand the legal issues raised by voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints to policies on voter ID requirements.

Findings

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.

Voter turnout at the state level in 2004 was lower in states where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Those figures, however, probably overstate the effect since the inclusion of other factors beyond voter ID requirements in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of the other factors, the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents orf people living below the poverty line.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[2] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the

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[2] Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous Voter ID requirements affect the decision by potential voters to go or stay away from the polls– are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice the publication of a "Voting Impact Statement" by states considering changing their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should analyze this publish an analysis of this information to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. The states should also be encouraged to use this information to increase the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
  - Useful information could be supplied by exit polling or surveys of voters by local election officials. It would make clear why those who cast a provisional ballot

were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.

  - Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.

- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[3], and the safe harbor provision in presidential elections.
- Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

Background and Approach of the Study

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The stress on voters to provide required ID documents may be greater at the polls on Election Day than when registering. The pressures arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may be faced with long lines and limited time.

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[3] Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [4] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures on voter ID goes ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. The controversy in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[5]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[6] Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and , if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

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[4] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

[5] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[6] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy,* cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[7] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.[8] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the

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[7] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[8] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes can be more effective if based on clear standards --legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[9]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[10]
3. How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[11]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[12] A thorough, objective

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[9] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[10] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[11] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[12] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at

impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[13]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another. Whatever the requirement may be, can all citizens comply with it easily and at no or minimal cost?

Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

This neat assignment in the following table and map of each state to one category no doubt fails to reflect actual practice at many polling places. Like any system run by fallible people, the voter ID process is subject to wide variation in practice. Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Some voters may be waved through the process without a look at any document, no matter what the regulations say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters actually encounter.

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administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[13] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen Hasen's has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

TABLE 1 -- Voter ID Requirements

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID^	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID******	Provide ID	Bring ID Later

Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

**State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

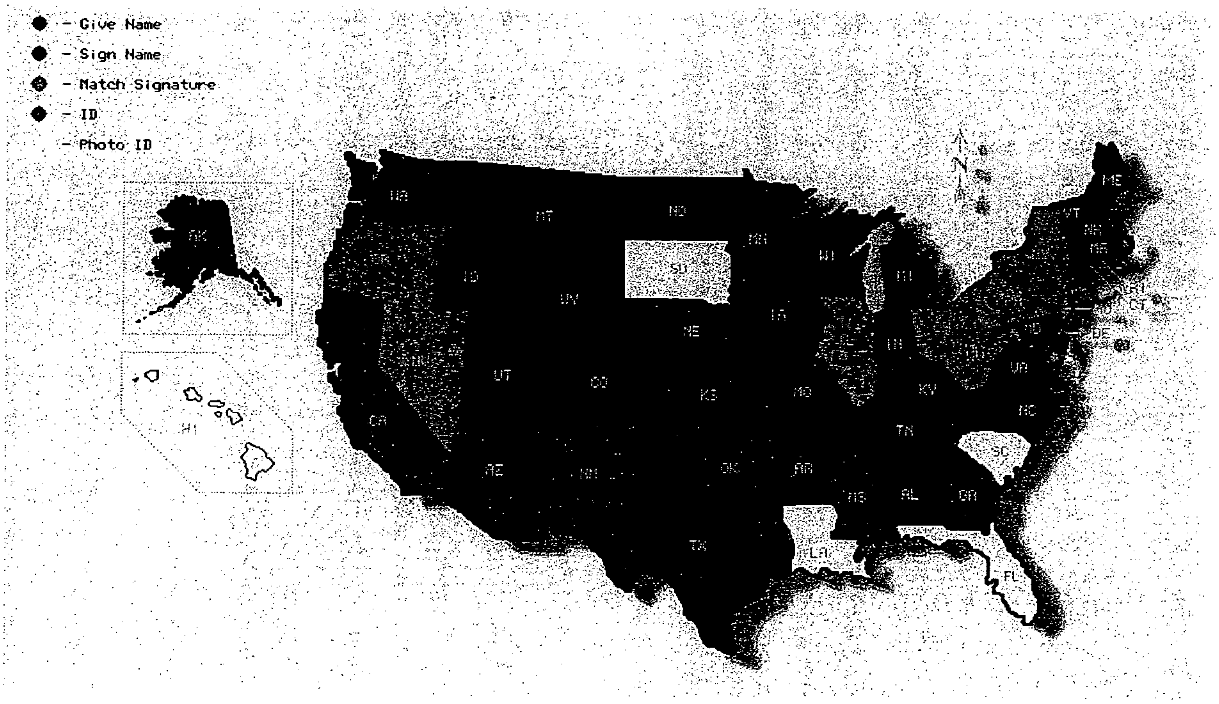
***Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

****Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

*****Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

******Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Figure 1



Voter ID Requirements 2004

Since it is not practical to attempt to capture the wide variety of how voter ID requirements are actually implemented across the nation's tens of thousands of polling places, the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

Effect of Voter ID requirements on Turnout

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [14]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

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[14] See Appendix ___ for the full report on voter ID and turnout.

Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit is regarded as the most rigorous.

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**63.1 %**	State Name	**61.3 %**
Sign Name	**58.6 %**	Sign Name	**60.4 %**
Match Signature	**62.1 %**	Match Signature	**59.2 %**
Provide Non-Photo ID	**57.8 %**	Provide Non-Photo ID	**57.6 %**
Provide Photo ID	**57.3 %**	Swear Affidavit	**58.7 %**
Average Turnout (All States)	**59.6 %**		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors can place the effects of voter identification in a more accurate context. The multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line. In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. The decline in turnout is particularly noticeable in counties with concentrations of Hispanic residents or individuals who live below the poverty line. Determining if the reduction in turnout is, in fact, among the Hispanic or poor residents of those counties requires further research at the individual level.

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and Conclusions of the Analysis

The results give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the self-reports of elderly voters, while indicating that they would be slightly less likely to vote as ID requirements become stricter, do not show a dramatic effect.

The data examined in this analysis could not capture the dynamics of how identification requirements lower turnout. Do know the voter ID and stay away from the polls because they cannot or do not want to meet them? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups,*

Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [15]

The dynamics of Voter ID requirements –how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in

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[15] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed. [16]

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[16] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

a. Summary of case law on Voter ID issues (included with this draft)
b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
d. Compendium of states' legislation, procedures, and litigation

APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14th Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

    - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
    - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
    - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
    - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
    - Substantive due process: ruled that internal use of SS# not a burden
    - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
    - P&I, Article IV: does not protect in-state citizens
    - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
    - VRA: ruled that race was not made a "qualification" for voting
    - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
    - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
    - VRA: ruled that it was not a "test or device" because it applied equally
    - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

***American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[17]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[17] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[18]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[19] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[18] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[19] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[20] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[20] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
    - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
    - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
    - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
    - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
    - Discusses changes in AL to their election law in 2003, including adding voter ID
    - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
    - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
    - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
    - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
    - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
    - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
    - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
    - Lot of analysis on HAVA and voter ID
    - Little bit of historical
    - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?,* 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes,* 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet,* 27 WM. MITCHELL L. REV. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?,* 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?,* 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon,* 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud,* 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution,* 52 U. PITT. L. REV. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy.* Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science.* 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences.* 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice.* 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics,* 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics.* 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review.* 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly.* 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------- "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice.* 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review.* 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy.* 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections.* Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective*. Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science*. 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------- "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------- "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------- "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------ "The Political Implications of Higher Turnout." *British Journal of Political Science*. 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly*. 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies*. 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality*. Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal*. 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research*. 29:2 (March 2001).

------ "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior*. 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting*. Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------- *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation*. Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980*. New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*. 57:3 (August 1995).

------- "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice*. 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics*. 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review*. 84:2 (June 1990).

------ "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review*. 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly*. 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology*. 103:5 (March 1998).

------ "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology*. 103:1 (July 1997).

------ "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review*. 62:6 (December 1997).

------ *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions*. New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science*. 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies*. 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report*. 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review*. 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice*. 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior*. 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government*. New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics*. 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------ *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------ "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------ "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review.* 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix

"Tom O'neill"
[redacted]>
03/29/2006 12:35 PM

To klynndyson@eac.gov
cc
bcc
Subject Census Bureau report on Voting and Registration

History: This message has been replied to.

Karen,

To the extent that the Census report you mention is based on the Current Population Survey data from November 2004, it is taken into account in the analysis of the effect of voter id requirements on turnout that is included in our report. The specific report, dated March 15 2006, was issued after our analysis was complete, and it is not cited in our research.

Tim Vercellotti is taking a look at the recent Census report and can comment on it generally at the briefing on April 3, if the subject comes up.

After our very useful discussion yesterday, I took a close look at Thor Hern's site at the American Center for Voter Rights. Its focus is on compiling reports of vote fraud, a topic we were asked to exclude from our research. It does include references to publications touching in part on voter identification, and the works Hern cites, most prominently the recent Harvard Law Review devoted to voting issues, is already reflected in our paper.

Tom O'Neill

Paul DeGregorio/EAC/GOV
03/26/2006 09:34 PM

To Karen Lynn-Dyson/EAC/GOV
cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV
bcc
Subject Comments regarding the Eagleton Report on Voter ID

History: This message has been replied to.

Karen,

As you requested, here are my comments regarding the final draft Eagleton report on Voter ID.

While the report is generally acceptable, I don't believe the current draft is ready to be released.

I found some parts of the report to be misleading and, at times, appearing biased to support a view that imposing ID requirements at the polls should be discouraged. As an example, on the first page they write about poll workers facing "long lines and limited time," suggesting that may be a problem for the workers to check ID. I am not sure what their point may be, as poll workers in states that require ID checking will still have to do so, no matter how long the voter lines they have. Many states and their polling places may not have long lines at the polls, and thus voters may not have the "limited time" suggested in the report. They don't support their suggestion with hard data on long voter lines and time limits on poll workers.

They selectively quote the Carter-Baker Commission study to suggest that "photographic ID requirements for in-person voting do little to address the problem of registration by mail" even though the Carter-Baker study actually promotes the idea of a photographic ID requirement at the polls. To be fair, they need to state that fact and the reasons why the Carter-Baker Commission comes to that conclusion.

Their table on page 7 indicates that Missouri's current ID requirement for first-time voters relies on HAVA requirements. It is my understanding that Missouri law requires that all voters must show some type of ID at the polls (therefore it should state "Provide ID" as they did in listing CO, CN and LA requirements).

On page 9 and on subsequent pages they make reference to "voting age population" (VAP) data issued by the Census Bureau. Is all the data they represent in their analysis based on the VAP or do they take into consideration the Citizen Voting Age Population (CVAP), which takes into account the number of non-citizens who may be included in the VAP? It is not clear from the report. You may remember that Kim Brace discussed the VAP vs. CVAP issue with us extensively, and he indicated that the CVAP figure is always the better one to use when analyzing Census Bureau data against voting data. He also said that many of the non-citizens included in the VAP figures tend to be Hispanic. And since the Eagleton study is making conclusions that indicate that more stringent ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses, as Kim told us that VAP figures do not compensate for the non-citizen Hispanic voters that are included at a higher rate in the VAP (because as Kim stated most of the non-citizen population in the USA tends to be Hispanic).

I would like to know if the new Census report data on the 2004 election released on March 15, 2006 changes any of their perspectives. http://www.census.gov/prod/2006pubs/p20-556.pdf

On page 12 they make reference to the CPS data and indicate that it reported a voter turnout rate of 89%, which is much higher than other data reported (which is also explained in their narrative). However, while the report indicates that the CPS data is "widely-accepted," it does make clear by whom. I think for credibility reasons they need more supporting language since there is a significant difference between a self-reported turnout of 89% and the reality of 63%.

Considering that the beginning of the document reveals a bias towards lesser ID requirements, I believe that it is important to highlight earlier in the report the conclusion found on page 14 that concerns by critics of voter identification requirements for African-American and elderly voters "are not borne out by the results." This will provide at least some balance to the reader.

On page 20 they indicate they lack good data on why voters must cast their ballots provisionally. I thought that our Election Day Survey captured some of that data.

It appears that a preponderance of their citations are from organizations or groups that support liberal positions on election issues, or take selective information from reports to support a more liberal interpretation of views on voter ID issues. Examples would include: Carter-Baker on page 1; Tova Wang on page 4; Carter-Baker on page 4; Brennan Center page 20. While many of published articles cited on pages 30 and 31 provide relatively neutral information, those that appear to take positions (read from the description of the articles) appear to favor a liberal position on most ID issues. I would have hoped they would have provided a more balanced approach. I don't see conservative writers, such as Thor Hearne, of the American Center for Voting Rights, quoted or cited once in the report. Mr. Hearne has testified before Congress and has had several articles that address voter identification issues.

I was pleased that they cited (on page 5) a recent March 15, 2006 article from the Arizona Republic that indicated that their stricter voter ID law went smoothly in its first use.

They might want to be aware (and perhaps mention) that the recommendation from Edward Foley cited on the bottom of page 21 was actually used in Haiti's recent February 7, 2006 presidential election. In addition to each voter being provided a picture ID by the election commission, that same picture was found next to the voters' name on the voter rolls that were used at the polling places. Perhaps they want to contact Scott Lansell of IFES for confirmation. The picture ID project for Haiti's election was financed and implemented by the Organization for American States (OAS). I believe turnout for that election was over 60% of those eligible.

Please let me know if you or anyone from Eagleton has questions regarding these comments. Thanks.

Paul DeGregorio
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"Tom O'neill"
[redacted]
03/24/2006 04:25 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Eagleton/Moritz February Report

Thanks, Karen. We have our regular team meeting scheduled for Tuesday afternoon. If we could have the comments by then, it would be most convenient.

Enjoy the weekend.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, March 24, 2006 10:50 AM
To: John.Weingart@rutgers.edu
Cc: [redacted]
Subject: Re: Eagleton/Moritz February Report

Just wanted to let you know that I have asked the Commissioners to provide me feedback on your report by COB today.

I will assemble their comments and pass them on to you by early next week at the latest.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart"
<john.weingart@rutgers.edu>
03/21/2006 11:45 AM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'Neill" [redacted]>
bcc
Subject Re: Eagleton/MoritzVoter ID Report

History: This message has been replied to and forwarded.

Karen - Here is a reply to your question. Sorry not to have gotten it to you more quickly.

There are a couple of reasons why we used the CPS. Most importantly, it is a survey of individual voters, as opposed to election officials. The CPS allows us to make inferences about individual-level charactertistics (such as the age, race, education and income of each registered voter who responded to the survey), and how those characteristics combine with voter ID requirements to influence turnout. Also, the sample size is large, allowing for reliable analysis of sub-populations (just Hispanic voters, for example). Because of those two factors, most of the scholarly studies of voter turnout and the institutional and individual-level factors that go into turnout use the CPS.

The EAC also might ask why we collected our own aggregate data as opposed to using the results of the Election Day survey. We could provide greater detail if needed, but, in brief, the EAC Election Day Survey draws data from the jurisdiction that handles elections. In many states that is the county, but in the New England states the EAC Election Day Survey uses towns as its unit of analysis. Our aggregate data atempts to match voter turnout data to Census data, which we have gathered at the county level.

Conceivably, we could have gone through and matched Census data to towns for the New England states, but that would have been very time-consuming. Moreover, it would also have posed a problem with the statistical analysis of the aggregate data, which assumes a two-level statistical model with counties as the first level and states as the second level. Inserting a third level of towns just for the New England states would require that each town in each county be coded with vote totals and Census data for each. That would take months.

Let me know if you need additional information of would like to discuss.

Thanks, John

klynndyson@eac.gov wrote:

>
> Quick question-
>
> What was Eagleton's thinking behind using CPS data rather than EAC's
> Election Day Survey for the Voter ID report?
>
> Thanks
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission

> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Paul DeGregorio/EAC/GOV
03/17/2006 04:46 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV
bcc
Subject Re: Voter ID Paper --Final Draft

History: This message has been replied to.

Karen,
Are we allowed to make comments on this paper in which they might consider changes --or is this the final version that we are to "accept" as is?
Paul

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 03/16/2006 08:57 AM
To: Paul DeGregorio; Raymundo Martinez; Gracia Hillman; Donetta Davidson
Cc: Thomas Wilkey; Juliet Thompson-Hodgkins; Amie Sherrill; Adam Ambrogi; Sheila Banks; Elieen Collver
Subject: Fw: Voter ID Paper --Final Draft

Commissioners-

Attached please find a copy of the draft Voter ID best practices paper which Eagleton submitted to me last evening.

I will confer with Tom regarding when you would like this put on your Commissioner meeting agenda.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM -----

"Tom O'neill"
<[redacted]>
03/15/2006 08:21 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com
Subject Voter ID Paper --Final Draft

Karen,

Attached is the final draft of the Voter ID paper, with recommendations for the EAC to consider promulgating as best practices. Two appendices are included as part of the draft and a third, the statistical analysis of the effects of different voter ID requirements on turnout, is attached separately to this email.

We look forward to discussing this final draft with you and with the commissioners on April 3. I'll be preparing a Powerpoint presentation for that meeting. Any guidance you can give me later this month on particular questions that briefing should address would be appreciated.

The Moritz-Eagleton team will be meeting next Tuesday at 9:30 a.m.. If you have preliminary comments you would like us to consider, that meeting would be a most convenient occasion to discuss them.

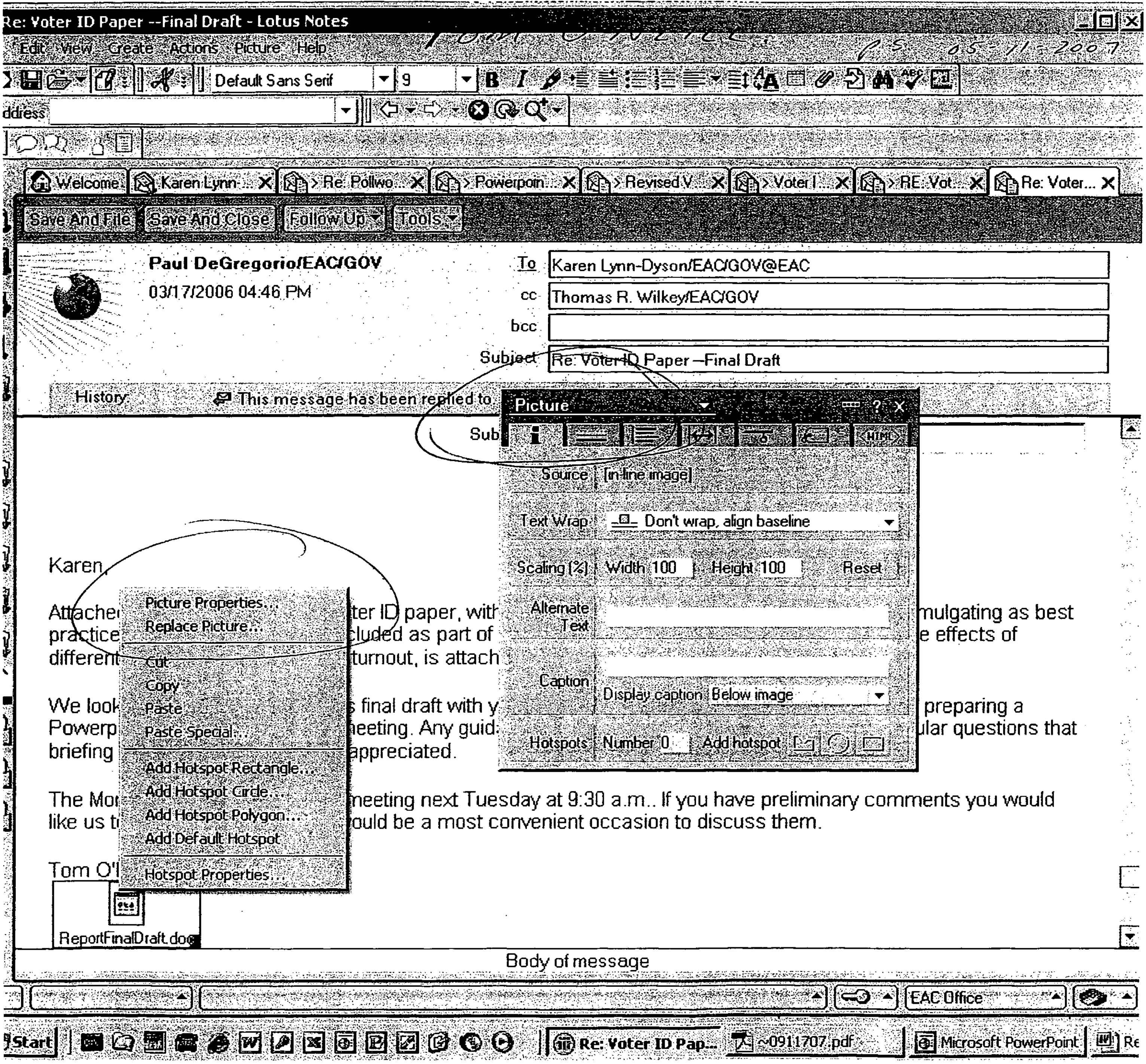
Tom O'Neill

ReportFinalDraft.doc

* THE "FILE" BELOW IS AN IMAGE (PICTURE). NO ATTACH'T IS ASSOCIATED W/ THIS EMAIL MESSAGE.

* SEE 3/15/2006 MESSAGE FROM TOM O'NEILL.

PS 05-11-2007



Paul DeGregorio/EAC/GOV
03/17/2006 04:46 PM

To: Karen Lynn-Dyson/EAC/GOV@EAC
cc: Thomas R. Wilkey/EAC/GOV
bcc:
Subject: Re: Voter ID Paper --Final Draft

Sub

Source: [in-line image]
Text Wrap: Don't wrap, align baseline
Scaling (%): Width 100 Height 100 Reset
Alternate Text:
Caption:
Display caption: Below image
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Karen,

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practice ... luded as part of ... e effects of
different ... turnout, is attach ...

We look ... final draft with y ... preparing a
Powerp ... neeting. Any guid ... ular questions that
briefing ... appreciated.

The Mo ... neeting next Tuesday at 9:30 a.m.. If you have preliminary comments you would
like us t ... ould be a most convenient occasion to discuss them.

Tom O'

"John Weingart"
<Johnwein@rci.rutgers.edu>
03/16/2006 10:49 AM
Please respond to
John.Weingart@rutgers.edu

To klynndyson@eac.gov
cc [redacted]
bcc
Subject Eagleton/Moritz February Report

History: This message has been replied to and forwarded.

Karen - I am attaching our monthly report for February. Please let me know if it raises any questions or if you need any additional information. I look forward to seeing you in a few weeks. John

--
John Weingart, Associate Director
Eagleton Institute of Politics
(732) 932-9384, x.290

--

EACProgressReportFebruary06.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
February 2006

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

March 15, 2006

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
  - Task 3.7
  - Task 3.8
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from February 1 through February 28, 2006. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In February we refined our analytic work on the effect of various voter ID regimes on turnout and benefited from the review of our draft analysis by the Peer Review Group. The PRG pointed out several areas where the analysis should be strengthened. Much of our time since that teleconference on February 22 has been devoted to undertaking the additional work along the lines suggested by the PRG's review.

We held a teleconference with EAC Executive Director Tim Wilkey and contract manager Karen Lynn-Dyson on February 28 to discuss the Commission's comments on the draft of the draft Provisional Ballot paper. As a result, we are now polishing the draft. In addition, at Mr. Wilkey's request, we are examining the effect of the different time periods established by the states for the evaluation of provisional ballots on the percentage of provisional ballots that end up being counted. As a result of the teleconference, a close out meeting on this contract has been set for April 3 at the EAC's offices in Washington.

We are meeting the schedule provided with the request for the no-cost extension granted last month..

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting. Please direct questions or comments about this report to [redacted]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. We received comments on the November draft report in a teleconference on February 22 with EAC Executive Director Tom Wilkey and Contract Manager Karen Lynn-Dyson. We are now revising and polishing the draft in accord with many of the comments by the Commissioners. In addition, we are analyzing the effect of the different time periods for the evaluation of provisional ballots established by the states on the percentage of provisional ballots that end up being counted. Preliminary results suggest that longer time periods result in more ballots being counted. That finding will be incorporated into the revised, final draft report.

Eagleton's Project Director took part in the joint Brookings Institution – American Enterprise Institute conference on Provisional Voting in Washington on February 8.

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. The EAC has accepted that recommendation. Our final report will include recommendations for promulgation by the Commission as "Best Practices," but will not include a proposed "Guidance Document," referred to in Taska 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance).

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, which is now the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has completed the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. The results of its work constitutes the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and has provided a summary analysis of its research, including litigation, included in the draft of the Voter ID paper that has now been reviewed by the Peer Review Group.

Progress: The review of current voter identification litigation nationwide is now included in the draft report.

Work Plan: In the remaining month of the project, Moritz and Eagleton will continue to work together to develop best practices in the area of voter identification, based on our combined research and the case law. work with the EAC to finalize our report on provisional voting.

RESEARCH EFFORTS

We continue to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification.

VOTER ID AND TURNOUT ANALYSIS

On February 22, the Peer Review Group reviewed the draft report on Voter ID issues, with a particular focus on the statistical analysis of the effects of different voter id requirements on turnout. We followed up that teleconference with further conversations with several members of the Peer Review Group. The PRG identified some problems with the analysis, and the bulk of our effort in the remainder of the month has been devoted to resolving the issues identified by the PRG. That work continues as this report is being written, and the resulting analysis appears to be clearer and more reliable than the previous draft.

Description: We have refined the database on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. We have also used the Current Population Survey's reports on electoral participation in 2004 to evaluate the effect of voter ID requirements at the level of the individual voter. This analysis suggests that more stringent voter ID requirements reduce turnout by several percentage points.

Progress: The PRG review of our work has strengthened the analysis considerably. The results will be seen in the revised draft of our report on this topic, which is nearing completion as this report is being filed.

Challenges: The models we are using, while sophisticated, are difficult to run and interpret. The analyses are time-consuming. The PRG's counsel has assisted in meeting this challenge.

Work Plan: We will complete a draft of the Voter ID report for the EAC in March.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: With its meeting to review the Voter ID paper, the PRG has completed its work on this project.

Challenges: No new challenges were encountered.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

A detail of expenses incurred from the project during the period January 1- February 28, 2006, will be sent in March under separate cover to Ms. Dianna Scott, Administrative Officer at the EAC.

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. The contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

"Tom O'neill"
[redacted]
03/16/2006 10:27 AM

To klynndyson@eac.gov
cc
bcc
Subject RE: Voter ID Paper --Final Draft

History: This message has been forwarded.

Karen,

Glad the paper arrived. Sorry it was a bit later than promised, but we reworked the statistical analysis on the basis of some insightful suggestions by the Peer Review Group. . .that took a few extra days (and nights). Looking back at my email to you, I realize the full statistical analysis was not attached as it should have been. It is appendix to the paper that will be of interest to those who want the details of our methodology. It is attached to this email.

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone [redacted]

Tom O'Neill

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Thursday, March 16, 2006 9:00 AM
> **To:** [redacted]
> **Subject:** Re: Voter ID Paper --Final Draft
>
> Tom-
>
> Thanks for getting this to me. I've forwarded it on to the Commissioners.
>
> Will try to see if I can get feedback next week.
>
> Regards-
> K
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Vercellotti314.doc

Deliberative Process Privilege

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns how such requirements affect voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

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This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Each state is classified as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with voter identification requirements ($r = -.21$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.16$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

Differences in voter turnout at the state level in 2004 varied based on voter identification requirements.[2] Taking into account the maximum requirements, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can place the effects of voter identification in a more accurate context. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the

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[2] Voter turnout is defined here as the percentage of the adult voting-age population that voted in November 2004, based on county vote totals reported by the states and U.S. Census population projections for the counties from 2003. McDonald and Popkin (2001) contend that using the voting-age population to calculate turnout understates turnout for a number of reasons. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults exerted a negative effect on voter turnout, as did the percentage of individuals living below the poverty line.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] Thus voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data (p = 0.0003).

Comment [o1]:

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .40, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.36 [-0.04 (voter id) - 0.38 (Hispanic) + 0.06 (voter id X Hispanic)].

[Table 3 here]

The effects of the minimum requirements are not statistically significant ($p = 0.15$). The battleground state variable continues to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate has no statistically significant effect. As in the maximum identification requirements models, as the percentage of the population that is Hispanic or poor increases, turnout declines. As the percentage of elderly increases, so does turnout. The proportion of African-Americans in the population does not affect turnout. Adding interactive effects to the model results in a statistically significant and negative effect of minimum voter identification requirements on turnout. But one must interpret this estimate with caution. A chi-square test for the difference in fit between the two models shows no significant difference ($p = 0.08$), and thus no improvement to the fit when adding the interactions between voter identification requirements and the percentages of the county that is Hispanic or lives below the poverty line.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991). Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm-Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[5] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the

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[5] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens.

It is important to note here that the voter turnout rate for the CPS sample is much higher than the turnout rates presented in the aggregate data analysis. The U.S. Census Bureau reported that 89 percent of registered voters in the CPS sample said they voted (U.S. Census Bureau 2005). Turnout among the voting-age population was 58 percent in 2004, according to the aggregate data analysis. The difference is a result of several factors. One factor consists of the different denominators in calculating the turnout rate – registered voters versus the much larger voting-age population. Also, previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of a level of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be much higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

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The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election. In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a competitive gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes). Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Deleted: In addition, I eliminated from the sample respondents who said they were not U.S. citizens.¶

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Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, and estimated robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[7] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

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Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore

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[7] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

variation in predicted probability by group. I disaggregated the sample by the variable of interest (such as race, for example), omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[8] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

Comment [o2]: The turnout figures shown in the analysis of the aggregate data range of 57.3% turnout to 63.1% turnout. When using the individual data, based on self-reports, the turnout figures approach 90%. I think a couple of sentences explaining the difference in the data between the two different analyses would be helpful here, even for readers comfortable with the statistical techniques used.

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The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent if the maximum requirement would be to state one's name, and the probability drops 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

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Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[9]

[Table 8 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify

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[8] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

[9] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 9 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election.

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The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

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Effects of voter requirements also varied with education. Registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

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Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

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In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[10] Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

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[10] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

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Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution,* March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science,* 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution,* March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior,* 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review,* 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics,* 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements			
Maximum Requirement		**Minimum Requirement**	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	63.1 %	**State Name**	61.3 %
Sign Name	58.6 %	**Sign Name**	60.4 %
Match Signature	62.1 %	**Match Signature**	59.2 %
Provide Non-Photo ID	57.8 %	**Provide Non-Photo ID**	57.6 %
Provide Photo ID	57.3 %	**Swear Affidavit**	58.7 %
Average Turnout for All States	59.6 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.70	0.02
Voter ID requirements	-0.02**	0.004	-0.04**	0.005
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.50**	0.03	0.51**	0.03
% African-American	0.02	0.01	0.04	0.04
% Hispanic	-0.17**	0.01	-0.38**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8234.5		-8253.5	

Coefficients are restricted maximum likelihood estimates. N = 3,112. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.62	0.01	0.66	0.02
Voter ID requirements	-0.008	0.005	-0.02**	0.006
Battleground State	0.04**	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.50**	0.03	0.49**	0.03
% African-American	0.02	0.01	0.02	0.03
% Hispanic	-0.17**	0.01	-0.37**	0.05
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8222.7		-8229.4	

Coefficients are restricted maximum likelihood estimates. N = 3,112. * $p < .05$ ** $p < .01$ (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		Minimum requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05** p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model

	Maximum requirement	Minimum requirement
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.759	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Comment [o3]: Can you add something to this footnote to once again clarify the difference between the very high turnout figures derived from the CPS respondents self-reports and actual measures of turnout which tend to be in the 50% -- 65% range.

Table 8. Predicted probability of voter turnout – Voters above and below the poverty line

	Voters above the poverty line		Voters below the poverty line
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.784
Sign name	0.915	0.915	0.772
Match signature	0.909	0.907	0.758
Non-photo ID	0.903	0.899	0.745
Photo ID	0.897	----	----
Affidavit	----	0.891	0.731
Total difference from lowest to highest	0.023	0.031	0.053
N	49,935		5,038

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters who were below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Aletha Barrington/CONTRACTOR/EAC/GOV
05/04/2006 04:36 PM

To berinsky@mit.edu,[redacted]
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Conference Call/ Eagleton Institute

Good afternoon everyone,

This is to inform you of a time set-up for the conference call on May 11, 2006 regarding Eagleton Institute/Voter Identification Research Project: it will be at 11:30 am, if everyone is available for this time then its a go, if not please contact me at your earliest convenience.

Thanks!

Aletha Barrington
Contracts Assistant
U.S. Election Assistance Commission
(202) 566-2209 (office)
(202) 566-3128 (fax)

"Adam Berinsky"
<berinsky@MIT.EDU>
05/03/2006 05:31 PM

To klynndyson@eac.gov
cc
bcc
Subject Re: Review of EAC research on Voter Identification

History: This message has been replied to.

I just got your phone message. I will still do the review, but I should note that I wont be able to do a full 90 minute phone call on the 11th -- perhaps we could schedule 30 minutes or so for me to be on the phone call.

At 05:36 PM 5/1/2006, you wrote:

> Dr. Berinsky-
>
> On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paperâ€™s findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:
>
> ℜ• The research methodology which was used to support the paperâ€™s conclusions
>
> ℜ• The specific statistical applications which were used to analyze the data and arrive at various conclusions
>
> If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.
>
> On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagletonâ€™s peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EACâ€™s Board of Advisors and Standards Boards in late May.
>
> While we are unable to offer financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Adam J. Berinsky
Associate Professor
Department of Political Science
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139 E53-459
Tel: (617) 253-8190
Fax: (617) 258-6164
E-mail: berinsky@mit.edu
Web Page: http://web.mit.edu/berinsky/www/

"Tom O'neill"
[redacted]
05/03/2006 03:29 PM

To klynndyson@eac.gov
cc
bcc
Subject May 11 teleconference

Karen,

Do you have a time for the May 11 teleconference? We're working to arrange the participation of members of our Peer Review Group and that is the key missing piece of information.

Thanks,

Tom O'Neill

Juliet E. Thompson-Hodgkins/EAC/GOV

05/01/2006 04:49 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: E-mail to Voter ID peer reviewers

I am concerned about the statement that EAC policy precludes us paying them. It is an issue of correctly soliciting and entering into a contract for the procurement of services. Perhaps there is a better way to phrase this, or is it even necessary

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

05/01/2006 02:58 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV
05/01/2006 04:07 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: E-mail to Voter ID peer reviewers

Then we are good to good

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 03:03 PM
To: Thomas Wilkey
Cc: Juliet Thompson-Hodgkins
Subject: Re: E-mail to Voter ID peer reviewers

It's my understanding that Julie thinks we are " good to go" as long as we don't pay them.

Correct?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc
Subject Re: E-mail to Voter ID peer reviewers

Did we resolve the contact issues on this?

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 02:58 PM
To: Thomas Wilkey; Juliet Thompson-Hodgkins
Subject: E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

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- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Juliet E. Thompson-Hodgkins/EAC/GOV

05/01/2006 03:56 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: E-mail to Voter ID peer reviewers

As long as we don't pay them, there is no contract issue.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"John Weingart"
<john.weingart@rutgers.edu>
04/26/2006 04:19 PM
Please respond to
john.weingart@rutgers.edu

To tnedzar@eac.gov
cc klynndyson@eac.gov
bcc
Subject Re: No-Cost Extension Request

Tamar - Do you know if this request can be approved by this Friday. If that is possible, it would greatly ease our internal path at Rutgers.
Thanks, John

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

tnedzar@eac.gov wrote:

>
> Mr. Weingart,
>
> Just sent the form again. Please let me know if you do not receive it
> today.
>
> Thanks,
>
> Tamar Nedzar
> Law Clerk
> U.S. Election Assistance Commission
> 1225 New York Avenue, NW Suite 1100
> Washington, DC 20005
> (202) 566-2377
> http://www.eac.gov
> TNedzar@eac.gov
>
>
> *"John Weingart" <john.weingart@rutgers.edu>*
>
> 04/21/2006 04:47 PM
> Please respond to
> john.weingart@rutgers.edu
>
>
>
> To
> tnedzar@eac.gov
> cc
>
> Subject
> Re: No-Cost Extension Request
>
>
>
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>

>
>
> Not yet received. Please send again with a cover sheet with my name to
> (732) 932-6778. Thanks.
>
> -- John Weingart, Associate Director
> Eagleton Institute of Politics
> (732)932-9384, x.290
>
>
>
>
> tnedzar@eac.gov wrote:
>
> >
> > Mr. Weingart,
> >
> > I just faxed the document we need you to sign before our Executive
> > Director can approve the no-cost extension.
> >
> > Please call if you have any questions.
> >
> > Thank you,
> >
> > Tamar Nedzar
> > Law Clerk
> > U.S. Election Assistance Commission
> > 1225 New York Avenue, NW Suite 1100
> > Washington, DC 20005
> > (202) 566-2377
> > http://www.eac.gov
> > TNedzar@eac.gov
> >
> >
> > *Karen Lynn-Dyson/EAC/GOV*
> >
> > 04/21/2006 10:10 AM
> >
> >
> > To
> > john.weingart@rutgers.edu
> > cc
> > "Tom O'Neill" <[redacted]>
> > Subject
> > Re: No-Cost Extension RequestLink
> >
> > <
Notes:///85256FFC007A9D7C/38D46BF5E8F08834852564B500129B2C/CFBC950B4682EC0E862
57157004C6064>
>
> >
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> >
> >
> > Thanks, John.
> >

> > I'm passing this on to our legal staff , who will be preparing the
> > documents.
> >
> > Will let you know if I need additional information and/or clarification.
> >
> > Regards-
> > Karen Lynn-Dyson
> > Research Manager
> > U.S. Election Assistance Commission
> > 1225 New York Avenue , NW Suite 1100
> > Washington, DC 20005
> > tel:202-566-3123
> >
> >
> >
> > *"John Weingart" <john.weingart@rutgers.edu>*
> >
> > 04/21/2006 09:52 AM
> > Please respond to
> > john.weingart@rutgers.edu
> >
> >
> >
> > To
> > klynndyson@eac.gov
> > cc
> > "Tom O'Neill" [redacted]
> > Subject
> > No-Cost Extension Request
> >
> >
> >
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> >
> >
> >
> >
> > Karen - We are requesting a no-cost extension on the EAC contract to the
> > Eagleton Institute of Politics at Rutgers University to have the
> > contract's concluding date move from March 31, 2006 to June 30, 2006. As
> > I indicated earlier, it would be very helpful if we could receive
> > approval of this request no later than April 28th.
> >
> > This extension is necessary to enable the following activities:
> >
> > 1. The EAC has informed us that it will assemble a panel of researchers
> > the week of May 8th to review the Eagleton/Moritz draft background
> > report on Voter Identification. The EAC wishes to supplement the review
> > of this draft
> > already conducted by the Peer Review Group called for in the contract.
> > The Eagleton/Moritz research team, as well as at least some of the Peer
> > Review Group will participate in the conference call or meeting of the
> > EAC's reviewers;
> >
> > 2. Eagleton/Moritz will revise the draft Voter Identification report
> > based upon comments made by the two sets of reviewers, and distribute
> > the revised report to the EAC and its Advisory Board in mid-May.
> >
> > 3. Eagleton/Moritz will present its draft reports on Provisional Voting
> > and Voter Idenfitication to the EAC Advisory Board at its May 25th

> > meeting in Washington, D.C.;
> >
> > 4. Eagleton/Moritz will revise both draft reports to take into account
> > comments made by the EAC Advisory Board, and submit printed final
> > reports to the EAC before June 23rd. Eagleton/Moritz will also prepare a
> > PowerPoint presentation for both reports.
> >
> > 5. Eagleton/Moritz will present both reports at the EAC public meeting
> > in Washington, D.C. on June 23rd, thus concluding its work under this
> > contract.
> >
> > Please let me know if you need any additional information.
> >
> > Thanks,
> >
> > John
> >
> > --
> > -- John Weingart, Associate Director
> >   Eagleton Institute of Politics
> >   (732)932-9384, x.290
> >
> >
> >
> >
> >
>
>

Tamar Nedzar/EAC/GOV
04/21/2006 03:30 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Fw: No-Cost Extension Request

History: This message has been forwarded.

Ooops. Here's the attachment.

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

Rutgers Memo.rtf

----- Forwarded by Tamar Nedzar/EAC/GOV on 04/21/2006 03:28 PM -----

Tamar Nedzar/EAC/GOV
04/21/2006 03:13 PM

To Karen Lynn-Dyson/EAC/GOV
cc
Subject Re: No-Cost Extension Request

Hey Karen,

Once John signs and faxes back the document, we need to get it to Tom with the memo to file (attached) for his signature. I believe that is all we need to do for the no-cost modification.

Thanks,

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
04/21/2006 10:10 AM

To john.weingart@rutgers.edu
cc "Tom O'Neill"[redacted]t>
Subject Re: No-Cost Extension Request

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

To:	File
From:	Tamar Nedzar, Law Clerk
Date:	April 21, 2006
Re:	No-Cost Extension to contract number E4014127 with the Eagleton Institute of Politics at Rutgers University

---

Background:
Contract E4014127 with the Eagleton Institute of Politics at Rutgers University ("contractor") was originally scheduled to be concluded on March 31, 2006. The contract's final products include a report on Voter Identification and a report on Provisional Voting. The contractor has vetted the reports with a Peer Review Group, pursuant to the terms of the contract.

Justification for No-Cost Extension:
The EAC wishes to supplement the contractor's Peer Review of the reports by adding another review process with some of the EAC's key stakeholders. The EAC proposes to assemble a panel of researchers during the week of May 8th to conduct the second review.

Following the second review, the contractor will revise its draft reports based on the comments it receives. The contractor will present its draft reports on Provisional Voting and Voter Identification to the EAC Advisory Board at its May 25th meeting in Washington, DC. The contractor will revise both draft reports, taking into account the EAC's Advisory Board's comments and submit the final reports to the EAC toward the end of June.

Recommendation:
The EAC recommends that contract E4014127 be modified at no cost to allow the contractor to complete their work by June 30, 2006.

Thanks, John.

I'm passing this on to our legal staff, who will be preparing the documents.

Will let you know if I need additional information and/or clarification.

Regards-
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
04/21/2006 09:52 AM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'Neill" [redacted]
Subject No-Cost Extension Request

Karen - We are requesting a no-cost extension on the EAC contract to the Eagleton Institute of Politics at Rutgers University to have the contract's concluding date move from March 31, 2006 to June 30, 2006. As I indicated earlier, it would be very helpful if we could receive approval of this request no later than April 28th.

This extension is necessary to enable the following activities:

1. The EAC has informed us that it will assemble a panel of researchers the week of May 8th to review the Eagleton/Moritz draft background report on Voter Identification. The EAC wishes to supplement the review of this draft already conducted by the Peer Review Group called for in the contract. The Eagleton/Moritz research team, as well as at least some of the Peer Review Group will participate in the conference call or meeting of the EAC's reviewers;

2. Eagleton/Moritz will revise the draft Voter Identification report based upon comments made by the two sets of reviewers, and distribute the revised report to the EAC and its Advisory Board in mid-May.

3. Eagleton/Moritz will present its draft reports on Provisional Voting and Voter Idenfitication to the EAC Advisory Board at its May 25th meeting in Washington, D.C.;

4. Eagleton/Moritz will revise both draft reports to take into account comments made by the EAC Advisory Board, and submit printed final reports to the EAC before June 23rd. Eagleton/Moritz will also prepare a PowerPoint presentation for both reports.

5. Eagleton/Moritz will present both reports at the EAC public meeting

in Washington, D.C. on June 23rd, thus concluding its work under this contract.

Please let me know if you need any additional information.

Thanks,

John

--
-- John Weingart, Associate Director
   Eagleton Institute of Politics
   (732)932-9384, x.290

"John Weingart"
<john.weingart@rutgers.edu>

04/19/2006 05:25 PM

Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov

cc

bcc

Subject Re: No cost extension paperwork

History: This message has been replied to.

Karen - Great. Can the no-cost request just be in the form of an email from me to you or do you need something more formal?

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> Hi John-
>
> As with the last no-cost extension request, I'll need a brief
> memo/statement outlining why you are making the request for the
> extension. Included in the narrative should be statement about which
> tasks have not been completed and why.
>
> I'm pressing ahead with the timeline we discussed last week. I think
> a May 5 teleconference may be too ambitious- I think it may be more
> likely that we'll get peer review comments during the week of May 8.
>
> Other than that I think it's doable.
>
> Thanks, as always, for your work.
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
>
>
> *"John Weingart" <john.weingart@rutgers.edu>*
>
> 04/19/2006 11:48 AM
> Please respond to
> john.weingart@rutgers.edu
>
>
>
> To
> klynndyson@eac.gov
> cc
>
> Subject

> Re: No cost extension paperwork
>
>
>
>
>
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>
>
>
> Ok. It would be very helpful to us to get that done before the end of
> April. When do you think you'll be able to get back to us about the
> schedule for completing the project we discussed last week?
>
> -- John Weingart, Associate Director
> Eagleton Institute of Politics
> (732)932-9384, x.290
>
>
>
>
> klynndyson@eac.gov wrote:
>
> >
> > John-
> >
> > One of our law clerks, Tamar Nedzar, is working with me on the
> > paperwork for your no-cost extension.
> >
> > She will be in touch with you this week, to determine the additional
> > information/documentation she may need to process a request for a
> > no-cost extension through June 30, 2006.
> >
> > Thanks
> >
> > Karen Lynn-Dyson
> > Research Manager
> > U.S. Election Assistance Commission
> > 1225 New York Avenue , NW Suite 1100
> > Washington, DC 20005
> > tel:202-566-3123
>
>
>

Thomas R. Wilkey/EAC/GOV
06/28/2005 08:55 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject RE: Peer Review Group

Thanks..I think this plan will work and this will allow us to set up a focus group of Election Officials and stakeholders who need to spend more time together anyway.
Tom
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
06/27/2005 05:45 PM

To "Tom O'Neill" [redacted]
cc
Subject RE: Peer Review Group

Tom-

Had a very good review and discussion of the PRG at this morning's Commissioner meeting.

Also, the Commissioners have marked their calendars for a conference call with the Eagleton/Moritz team on July 12 at 9:30 AM.

Several concerns were raised about the composition of the PRG and, after some discussion, I indicated that Eagleton will provide the EAC with a revised participant list, and with a more detailed description of the PRG's mission, goals, objectives, workplan and timelines for accomplishing its work.

The Vice Chair is concerned that there is not sufficient conservative representation on the PRG. I would suggest the team do more research to identify well-recognized conservative academics to put on the Group.

Further, the Commissioners recommend a tiered process in which the PRG will prepare a "dispassionate" analysis of the issues and draw some tentative conclusions. This analysis and these conclusions will then be vetted with a defined/select group of local election officials, and then, with a defined/select group of advocacy organizations.

It was also suggested that a final round of focus group meetings be held with a cross-section of these election officials, advocates and academics for an overall interactive reaction to the analysis and recommendations.

Hope this helps clarify concerns; I look forward to sharing your revisions to the PRG with them.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005

"Tom O'neill"
[redacted]t>
07/13/2005 12:29 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Peer Review Group

Thank you, Karen.

Tom

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, July 13, 2005 11:05 AM
To: tom_oneill@verizon.net
Cc: cpaquette@eac.gov; twilkey@eac.gov
Subject: RE: Peer Review Group

Tom-

I will take up the matter of next steps with the Peer Review Group, with Tom Wilkey, the EAC Executive Director ASAP.

I will have an answer regarding the EAC's suggested next steps on how to proceed on this matter as quickly as possible.

Regards-

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]

n.net>

07/12/2005 07:17 PM
To cpaquette@eac.gov
ccireed@rutgers.edu, john.weingart@rutgers.edu, klynndyson@eac.gov, lauracw@columbus.rr.com, foley.33@osu.edu, rmandel@rci.rutgers.edu
Subject RE: Peer Review Group

Carol,

I sent you the email on the Peer Review Group because you asked me to. When we discussed the issue in New York, you told me to send to you in writing our response to the Commission's suggestions for a new, more elaborate review process. I believe I copied Karen on that email.

Learning now, almost a week later, that you have taken no action is disheartening. As you know, our schedule is tight, and we need the counsel the Peer Review Group can provide. I hope, therefore, that Karen will take immediate action to resolve the situation so we can begin to recruit the review group in time to assure the quality of the resource design.

Tom O'Neill

-----Original Message-----
From: cpaquette@eac.gov [mailto:cpaquette@eac.gov]
Sent: Tuesday, July 12, 2005 6:37 PM
To: klynndyson@eac.gov
Cc: Foley, Ned; reed, ingrid; Weingart, John; Laura Williams; Mandel, Ruth; Tom O'Neill
Subject: Re: Peer Review Group

Karen, Tom -

I am not taking any action on the email Tom sent a few days ago regarding the Peer Review Group because the Eagleton project is not my responsibility. As I indicated earlier to Karen, I didn't know why this was sent to me since Karen is the Project Manager. I endorse her comment below regarding the need for including her in all correspondence with anyone at the EAC regarding the project.

When I was the Interim Executive Director it was part of my job to stay on top of all EAC project work. I now have other responsibilities at the EAC, and while I am happy to continue involvement in other projects for continuity and transition purposes as needed, that needs to be very limited. My involvement with the Eagleton work has only been from the contracting perspective, and that is the only continuing role I have. Any substantive project activities have to be taken up with Karen.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV

07/12/2005 05:08 PM

To "Tom O'Neill" [redacted]>@GSAEXTERNAL

cc "Paquette, Carol" <cpaquette@eac.gov>, "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams" <lauracw@columbus.rr.com>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>

Subject Re: Peer Review Group Link

Tom-

I trust you are in contact with Carol and Julie regarding the information on the Peer Review Group and the July 28 hearing at Cal/Tech that you have requested of them, respectively.

While the EAC is a small agency with relatively few reporting layers, I suggest that for all future items requiring feedback and decisions from the EAC, that you are certain to carbon copy me on all e-mails.

This will ensure, that as your primary point of contact, I have a record of all communication that has taken place between the contractor and the agency.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" <tom_oneill@verizon.net>

07/08/2005
03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>
cc "Laura Williams" <lauracw@columbus.rr.com>, "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
Subject Peer Review Group

Carol,

After our discussion in New York, you asked me to put in writing our response to the EAC's suggestions for expanding the number and kinds of groups that would review and comment on our work. I hope after your review of this response, we will be able to quickly recruit a balanced Peer Review Group (PRG) and move ahead as the schedule in our work plan indicates. Attached is a revised list of the members we propose for appointment to the PRG. We will probably not be able to persuade all of them to serve, but the number and range of views included on the proposed list should ensure that the resulting group is well-balanced.

Tom

RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG
Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

1. Not sufficient conservative representation on the PRG

2. Create a "tiered process" of review in which:
A. The PRG will prepare a dispassionate analysis of the issues and draw some tentative conclusions.
B. PRG's analysis would be vetted by a defined/select group of local election officials.
C. A defined/select group of advocacy organizations would review the comments of the local election officials
D. Empanel a final focus group of local election officials, advocates and academics for an overall, interactive reaction to the analysis and recommendations.

Project Team Response
Creating three new committees to the review process to supplement the work of the Peer Review Group (PRG) is possible, but would add at least 8 weeks –and possibly 12 weeks-- to our completion of the guidance document on provisional voting. We believe this delay would risk limiting the value of this project for the 2006 election. In addition, the change would add at least $30,000 to the cost of our work. (See the attached table showing the possible effect on our work plan, and note the optimistic assumptions such as the ability to hold a hearing the week after Christmas.). If the same groups were to be engaged in reviewing our work on Voter ID, the time for that work would also have to be stretched at a similar increased cost.

This additional cost and the added time might be worthwhile. . . if the new layers of review were to produce a consensus on how to strengthen the research, sharpen the analysis, and increase the relevance of the Guidance Document. Our team concluded, however, that additional review groups were unlikely to achieve these results.

PRG focuses on quality of research
We believe that our research would be strengthened by a balanced Peer Review Group that will focus on the design of the research and our conduct of it. Based on the EAC's recommendation, we have revised the composition of the PRG to include additional, well-recognized authorities in the field whose perspective is generally agreed to be conservative.

The PRG will focus on the strength of the research design and the quality of our analysis, not on the politics of our recommendations for the guidance document. The PRG will critique the research design and suggest how to strengthen it. Members of the group will review the quality of our analysis so that we can fill holes and correct errors before we make policy recommendations to the EAC. The PRG may or may not meet as a group. The likelihood is that most comments will come in writing from individual members, most of whose schedules would not permit attendance at meetings. In any case, the PRG members will not gather around a table to come to consensus on the study's recommendations.

While using the PRG as a forum to reach consensus on the knotty issues involved does not appear practical, the EAC can benefit from the work of other groups in this regard. It is not necessary for this project to duplicate the deliberative processes of the Carter-Baker Commission, the Century Foundation and the Election Center. The EAC itself as well as the project team can get the benefit of these reports without duplicating this "policy evaluation board" structure as part of this contract.

Project Team focuses on analysis and recommendations

Karen reported that the Commissioners believed that the PRG would "prepare a dispassionate analysis of the issues and draw some tentative conclusions." As we see it, the PRG will neither analyze data nor draw conclusions, tentative or otherwise. Its members will review and comment on how the Project Team has designed and carried out the research. Analysis, conclusions and recommendations are the responsibility of the Project Team. We have all seen in the preface to books or articles a sentence or two that read something like this, "The author thanks Mr. X, Ms. Y, and Dr. Z for their review and comment on the manuscript. Their analysis has strengthened the work, but they are in no way responsible for errors or for my conclusions." That is the way we think about the Peer Review Group.

In short, the PRG will help ensure that EAC's Guidance Document is founded on a solid base of data and analysis. The review and comment on the Preliminary Guidance Document by the EAC's Board of Advisors and Standards Board will provide participation by important stakeholder groups without the need for the other review committees. This Board is broad-based and represents a key stakeholder group. It also enjoys a significant advantage over a "defined/select" group we might empanel. Any group we define will be open to criticism or charges of bias by representatives of interest groups not represented.

The criticism and charges of bias might be tolerable, but only if we could expect consensus from the "defined/select" group we would appoint. We believe that consensus would be elusive. In empanelling a "defined/select" group, we would naturally look for balance and would appoint members to represent a point of view or an institutional interest. As representatives they would likely feel that they had little choice but to be strong advocates. They would have little incentive to compromise. Our research, as opposed to our policy recommendations, would be better served by the analysis of scholars than by the advocacy of interests.

Policy judgments

We regard the EAC itself as responsible for the policy judgments involved in shaping the Guidance Document. We plan, of course, to respond to the EAC's comments on our preliminary draft, so that the EAC's comments will shape the Preliminary Guidance Document before it is released for public comment. And further revision will follow the public hearing and comments. The EAC and individual Commissioners can always seek comment informally on our analysis or recommendations. That course appears to us preferable to the creation of a new, more elaborate review process.

Carol A. Paquette/EAC/GOV
07/12/2005 07:49 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Fw: Peer Review Group

Karen -

Please see Tom's email below. I checked his previous email on the peer review group and you were copied. Maybe you didn't get this because of the email problem you were having. Anyhow, I'm not responding to his latest message, just letting it drop.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
----- Forwarded by Carol A. Paquette/EAC/GOV on 07/12/2005 07:45 PM -----

"Tom O'neill"
[redacted]
07/12/2005 07:17 PM

To cpaquette@eac.gov
cc ireed@rutgers.edu, john.weingart@rutgers.edu, klynndyson@eac.gov, lauracw@columbus.rr.com, foley.33@osu.edu, rmandel@rci.rutgers.edu
Subject RE: Peer Review Group

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Sent: Tuesday, July 12, 2005 6:37 PM
To: klynndyson@eac.gov
Cc: Foley, Ned; reed, ingrid; Weingart, John; Laura Williams; Mandel, Ruth; Tom O'Neill
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Karen Lynn-Dyson/EAC/GOV
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<tom_oneill@verizon.net>

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"Tom O'neill"
[redacted]
07/12/2005 07:17 PM

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cc ireed@rutgers.edu, john.weingart@rutgers.edu, klynndyson@eac.gov, lauracw@columbus.rr.com, foley.33@osu.edu, rmandel@rci.rutgers.edu
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cc "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams"
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PROPOSED MEMBERSJuly6.doc

"Tom O'neill"
<tom_oneill@verizon.net>
03/15/2006 09:21 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu,
bcc
Subject Voter ID Paper --Final Draft

History: This message has been replied to and forwarded.

Karen,

Attached is the final draft of the Voter ID paper, with recommendations for the EAC to consider promulgating as best practices. Two appendices are included as part of the draft and a third, the statistical analysis of the effects of different voter ID requirements on turnout, is attached separately to this email.

We look forward to discussing this final draft with you and with the commissioners on April 3. I'll be preparing a Powerpoint presentation for that meeting. Any guidance you can give me later this month on particular questions that briefing should address would be appreciated.

The Moritz-Eagleton team will be meeting next Tuesday at 9:30 a.m.. If you have preliminary comments you would like us to consider, that meeting would be a most convenient occasion to discuss them.

Tom O'Neill

ReportFinalDraft.doc

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

1. Introduction and Report Background

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve implementation of the requirements for voters to show identification pursuant to [statute or regulation citation] It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

2. Voter Identification –Background and Approach of the Study

Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The burden of providing required ID documents on the voter may be greater at the polls on Election Day than at the time of registration. The burden of checking ID, even as simple as a signature match, can be much greater on election workers at the polls than on those registering voters. Poll workers may be faced with long lines and limited time. This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [1] The emphasis here is on Voter ID on Election Day and afterwards as election judges evaluate provisional

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[1] As the Carter-Baker Commission noted, photographic ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify identification. Commission on Federal Election Reform, pp 46-47.

ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

This analysis takes a view of voter ID issues broader than the rather narrow identification requirements in HAVA. Much of the national ferment over voter ID goes beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those casting a ballot for the first time who had not registered in person. The controversy in the states over voter ID stems from the HAVA requirements, goes beyond those requirements, and sets the context for the analysis here.[2]

Identification is often described as the critical step in protecting the integrity of the ballot, the process that ensures that the potential voter is eligible and permitted to cast a ballot and one ballot only. In fact, ensuring ballot integrity requires a perspective that takes in the entire voting process. Protecting the integrity of the ballot requires more than preventing the ineligible from voting. It also should ensure that all those who are eligible and want to vote can cast a ballot that counts, and that they can effectively cast a ballot for the candidate of their choice. The protection effort must take into account all forms of voting, including absentee ballots, and embrace each step in the process. A voting system that establishes onerous requirements for voters to identify themselves may prevent the ineligible from voting, but it may also prevent the eligible from casting a ballot. If the ID requirements of a ballot protection system block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or forget to bring to the polls the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This analysis does not include consideration of the incidence of vote fraud, the forms that it takes, nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. The EAC has commissioned a separate study of vote fraud and instructed us not to address that issue in this research.

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[2] Harvard Law Review 119:1127. "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA. . . . HAVA makes explicit that it shall not 'be construed to prevent a State from establishing election technology and administration requirements that are more strict than' HAVA itself provides. The states have accepted the invitation. "

Nonetheless, a broad view of ballot integrity is needed to appreciate the background and context of this narrower study. We explore the inter-relationships between Voter ID requirements and Provisional Voting and estimate the effects of various voter id requirements on turnout and on the casting of provisional ballots.

Voters lacking required ID, or who have ID that does not reflect their current address, may be able to vote only by casting a provisional ballot.[3] To the extent that stricter voter ID requirements divert more voters to the provisional ballot, voter ID requirements can put stress on the already pressured management of the polling place. Administering provisional ballots is more expensive than the normal ballot. Scrutiny of ID can create lines at the polling places, lines made longer as voters are diverted to the provisional voting line. Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle that will keep more citizens from the polls. A review of voter identification practices should keep in mind that America's problem may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes will be more effective if based on clear standards --legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

- Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?
- How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[4]
- How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity

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[3] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[4] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[5]

- How cost-effective is the system? Does it increase the security of the ballot at an affordable cost, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.
- If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[6]
- Does it comply with the letter and spirit of Voting Rights Act?
- The seventh question is more difficult to measure than those described in the 6 questions outlined above. The Voter ID requirements should have a neutral result on the composition of the qualified electorate. That is, those requirements should not be designed to reduce the turnout of particular groups of voters who may have a propensity to support one party over another. Whatever the requirement may be, all citizens should be able to comply with it easily and at no or minimal cost.

Summary of findings and conclusions

Voter turnout at the state level in 2004 declined where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Including other factors beyond voter id requirements diminishes the influence of voter ID on turnout. But the analysis still offers some support for the hypothesis that as the burden of voter identification

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[5] In New York, in 2004, disparities in training and voting information were made all too apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[6] For example, the Carter-Baker Commission accompanied its recommendation for a national voter ID card with a recommendations for an affirmative effort by the states to reach out and register the unregistered, to use the new Voter ID regime as a means to enroll more voters.

requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[7] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice that before states adopt a change described as increasing ballot security, states should publish an analysis of the number of eligible, potential voters that the new requirement may keep away from the polls or be permitted to cast only a provisional ballot as well as an estimate of the number of ineligible voters who will be prevented from voting.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. The data should be analyzed to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent and should describe the dynamics of voter ID in preserving the security of the ballot?

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[7] Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

  - Useful information could be supplied by exit polling. It would identify those who had cast a provisional ballot and ask why they were unable to cast a regular ballot. Answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
  - Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter id requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three criteria: the convenience of the voter, the total time allowed to evaluate ballots[8], and the safe harbor provision in presidential elections.

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[8] Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

3. Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility.

TABLE 1 -- Voter ID Requirements

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later

New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Match Sig.	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID******	Provide ID	Bring ID Later
Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

**State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

***Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

****Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

*****Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

******Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

In 9 states, voters were required merely to state their names so that poll workers could locate them in the registration book. In 14 states, voters signed their names. In 8 states, voters' signatures were matched with a specimen signature. In 15 states voters had to show some form of ID, not necessarily an official picture ID. And in 5 states, voters were required to show an official photo ID, although in 2004 voters who lacked a picture ID could execute an affidavit and vote a regular ballot.

This neat assignment of each state to one of a few categories may fail to reflect actual practice at a polling place. Like any system run by fallible people it is subject to wide variation in practice. Voters may be confronted with demands for identification at variance with state statutes or legislation. Other voters may be waved through the process without a look at any document, no matter what the regulations may say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters may encounter.

It is not practical to attempt to capture the wide variety of how voter ID requirements may be actually implemented across the nation's tens of thousands of polling places. Recognizing that means that the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

Effect of Voter ID requirements on Turnout

Summary of Findings and Conclusions

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [9]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each

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[9] See Appendix ___ for the full report on voter ID and turnout.

level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. a form of identification, and providing a form of photo identification.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**63.1 %**	State Name	**61.3 %**
Sign Name	**58.6 %**	Sign Name	**60.4 %**
Match Signature	**62.1 %**	Match Signature	**59.2 %**
Provide Non-Photo ID	**57.8 %**	Provide Non-Photo ID	**57.6 %**
Provide Photo ID	**57.3 %**	Swear Affidavit	**58.7 %**
Average Turnout (All States)	**59.6 %**		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors an place the effects of voter identification in a more accurate context. To consider that broader context, our multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground for president, governor or senate voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-

Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line.
In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line.

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. (Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting.) Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age in years, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note

that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and Conclusions of the Analysis

The results presented here give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this analysis could not capture the dynamics of how identification requirements might lower turnout. Do these requirements dampen turnout because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most

effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

4. Litigation over Voter ID Requirements

There have been a handful of cases challenging identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether or not laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on cases challenging requirements that voters present some form of identifying documents if the photo identification is the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups,*

Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

suggest that best practice may be to conform to the NVRA's limitation on requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

5. Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

This information would allow a more informed judgment to be brought to bear in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [10] The dynamics of Voter ID requirements – how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That research might address that, so far as may be

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[10] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." The exclusion of voters through restrictive ID requirements could affect election outcomes as much as fraud by voters at the polls. *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

necessary to reduce vote fraud, could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended by our colleague Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed. [11]

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[11] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. These electronic photos should satisfy the anti-fraud concerns of conservatives as much as printed photos that citizens would be required to bring to the polls. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

a. Summary of case law on Voter ID issues (included with this draft)
b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
d. Compendium of states' legislation, procedures, and litigation

APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14th Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

  - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
  - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

***American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[12]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[12] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[13]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[14] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[13] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[14] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[15] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[15] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
    - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
    - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
    - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
    - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
    - Discusses changes in AL to their election law in 2003, including adding voter ID
    - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
    - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
    - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
    - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
    - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
    - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
    - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
    - Lot of analysis on HAVA and voter ID
    - Little bit of historical
    - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
  - Costs & Benefits of Internet voting
  - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
  - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
  - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
  - History of voting and requirements
  - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice*. 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics*. 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review*. 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly*. 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------- "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice*. 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis*. Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review*. 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy*. 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics*. 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections*. Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective*. Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies*. 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science*. 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior*. 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography*. 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies*. 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout*. Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research*. 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects*. Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------ "Easy Registration and Voter Turnout." *Journal of Politics*. 59:2 (May 1997).

------- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000).

------ "Voter Registration and Turnout in the United States." *Perspectives on Politics*. 2:3 (September 2004).

------ "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly*. Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research*. 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998).

------ "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------ "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------ *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------- "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------- "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review*. 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly*. 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology*. 103:5 (March 1998).

------- "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology*. 103:1 (July 1997).

------- "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review*. 62:6 (December 1997).

------ *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions*. New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science*. 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies*. 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report*. 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review*. 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice*. 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior*. 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government*. New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics*. 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------ *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------ "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------ "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review*. 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix

"Tom O'neill"
[redacted]
03/15/2006 05:54 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Draft comments on the Provisional Voting document

Karen, You'll have it tomorrow.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, March 15, 2006 4:37 PM
[redacted]
Subject: RE: Draft comments on the Provisional Voting document

Hi Tom-

Just checking in on the ETA for the Voter ID Best Practices document.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Gracia Hillman/EAC/GOV
03/02/2006 02:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov, rmartinez@eac.gov, Ddavidson@eac.gov, sbanks@eac.gov, Juliet E. Thompson/EAC/GOV@EAC
bcc
Subject Re: Eagleton close-out meeting

History: This message has been replied to.

Nicole's email says the time is 2:30 to 4:30, making it sound like one meeting. I am not suggesting two separate days but inquiring about the need for there to be two separate sessions, per our GC's counsel.

"Tom O'neill"
[redacted]
02/24/2006 05:24 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Draft comments on the Provisional Voting document

History: This message has been replied to.

Karen,

I think we should continue with our plan to have a teleconference on Feb. 28. My quick review of the written comments tells me some further give-and-take is needed. I believe we agreed on 4:00 p.m. as the time for this conversation, a change from the original hour of 3.

The call in number will be 877-805-0964, ID# is 869580. Best wishes for a good weekend.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, February 24, 2006 9:10 AM
[redacted]
Subject: RE: Draft comments on the Provisional Voting document

Tom-

It occurs to me that perhaps a conference call is no longer necessary? Have the team take a look at the Provisional Voting Best Practice EAC edits and let me know.

Perhaps it would be better to schedule a brief conversation after I've received the Voter ID document. Such a conversation could focus on the close-out meeting at the end of March and the issues we wish to cover at that meeting.

Your call.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100

Washington, DC 20005
tel:202-566-3123

"Tom O'Neill"
[redacted]
02/23/2006 06:41 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Draft comments on the Provisional Voting document

History: This message has been replied to.

Thanks, Karen. Looking forward to our conversation on the 28th.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 23, 2006 4:31 PM
[redacted]
Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
Subject: RE: Draft comments on the Provisional Voting document

Tom and John-

Attached please find the EAC comments to your draft report. We look forward to reviewing the Voter ID report in a week or so. I should have a date for the March project close-out meeting by early next week.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill"
[redacted]
02/16/200
6 03:33

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu,

PM foley.33@osu.edu, lauracw@columbus.rr.com
SubjectRE: January Progress Report

Karen, I'll survey the group about the best time for a conference call. The 24th does not look like a good time. We have a teleconference with the Peer Review Group on the Voter ID paper scheduled for Feb. 22, and therefore would be hard-pressed to review the précis of your comments in time for a discussion on the 24th. The next week would be more promising, perhaps Tuesday, Feb 28 in the afternoon.

We still plan to deliver the Voter ID paper to you the first week in March.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 16, 2006 1:33 PM
[redacted]
Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
Subject: Re: January Progress Report

Tom-

I have now received comments back on the Provisional Voting Best Practices document, from all of EAC's senior staff. I am in the process of combining these comments into one document, and will get the copy to you by mid-week next week.

By-and-large the comments are not major. The comment of greatest magnitude relates to the fact-checking process and the overall accuracy of regarding Eagleton's/Moritz' recording of States' previous experiences with provisional voting.

Overall, the Commission is continuing to review its option of issuing guidance on this topic, along with best practices.

Shall we schedule a conference call for Friday, February 24 at 10:00 AM to go over the EAC's comments and Eagleton putting the finishing touches on its report?

Also, when should the EAC expect the Voter ID document?

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Nicole Mortellito/CONTRACTOR/EAC/GOV

02/23/2006 04:12 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Final Best Practices document final and attachment Two

History: This message has been forwarded.

Final markups

Regards,

Nicole K. Mortellito
Research Assistant
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax

Best Practices FINAL 2-23-06.doc - Final Best Practices__attachment Two.xls

DRAFT

Deliberative Process
Privilege

Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Provisional Voting
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252

November 23, 2005

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

FINAL DRAFT
11/23/2005

Report to the
U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

CONTENTS

Executive Summary

Please provide an Executive Summary to provide background and summarize the key recommendations.

Background of the Research

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning provisional voting, a sample survey of local election officials, and a statistical analysis of provisional voting in the 2004 election. Also consulted as a basis for these recommendations were other studies, notably the EAC's Election Day Survey.[1] (Recommended as Research Methodology description)

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.[2] The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that where the ballot must be cast in order to be counted.[3]

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, first-time voters who cannot provide identification, as required under HAVA, and voters who were

---

[1] Appendix 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures and describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

[2] The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions. " See www.electioncenter.org .

[3] The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell, 387 F.3d565* (6th Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

challenged at the poll.[4] HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. HAVA also requires election administrators to notify individuals of their opportunity to cast a provisional ballot.

Provisional Ballots in the 2004 Election

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.[5] (This number does not match the EAC 2004 Election Day Survey. 64.5% counted)

These totals obscure the tremendous variation in provisional voting among the states. HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Six states accounted for two-thirds of all the provisional ballots cast.[6] State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000, from a high of 7% in Alaska's to Vermont's .006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted ballots at more than twice that rate: 44%. (Or, as the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without."[7])

The wide variations in the use of provisional ballots argue for the promulgation of best practices that states can use to determine how to make procedures clearer to both officials and voters could improve the implementation of provisional voting across the country. (Is this a best practices recommendation?)

One important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.[8]

---

[4] The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See http://wired.com/news/evote/0,2645,63298,00.html . (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004 .)

[5] These figures differ slightly from those in the Election Day Survey. Data used for this study include complete voting data for New Mexico, for which the Election Day Survey had only partial data, and vote totals for Pennsylvania, which was not included in the provisional voting analysis in the Election Day Survey. See the appendix to this report for a full explanation of the differences in data between this research and the Election Day Survey.

[6] California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

[7] Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

[8] See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots. (The average of provisional ballots cast was 64.5% counted. A third category had to account for a significant amount over 64.5%. What was that category?)
- Perhaps another reason provisional ballots must be cast in the correct precinct in order to be counted is that local races are also important and that allowing provisional ballots to be counted by voters who cast them outside of the precinct and only counting the ballots for the upper ballot races for outside of the precinct can disenfranchise voters from participating in local races. This argument has been used by many legislatures and in court castes to require that provisional ballots must be cast in the correct precinct in order to be counted.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.[9] That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC should consider providing all states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning

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[9] Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's " 6-day time frame for processing the provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

curve. Two other possibilities exist. Current understanding of the provisional voting processes in use in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.[10] This ballot should mention something about election judges and their training.

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2. "Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail safe way for voters with registration problems a way to cast a ballot. (wording too strong) The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

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Other influences decreasing consistency among the states include:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted. Some states merely require a voter's signature, some match signatures, some require identity documents, others require an affidavit, and a few require photo identification. [11]
    - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
    - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
    - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
    - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half

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[10] Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, "no state gave the voter the right to find out the status of their ballot after the election. " Now all offer that opportunity. See Bali and Silver, "The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000," manuscript, Department of Political Science, Michigan State University. Resisting HAVA's mandates through foot-dragging lacks any legitimate foundation in law or policy.

[11] See Table 2 in Appendix 2 for information on the verification method used in each state.

(52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office. (the voter was registered, than the ballot counted, the voter did not have to present identification).

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- Voter registration databases provided information that reduced the number of provisional ballots counted.[12] In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.[13]
    - In experienced states, the disparity was even more pronounced, 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
    - If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.[14]

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots. Perhaps it is the judges training or it is, in part, because of different laws.[15]

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[12] The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

[13] The Election Day Survey concluded that : "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

[14] This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

[15] For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly

Reacting to the lack of consistency within states, (not the Carter-Baker Commission) recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."[16]

Election Line reported that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, high mobility, (no previous mention of this factor. What research exists to back up naming high mobility as a factor?) and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts were the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader

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non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

[16] Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.16. The report observed that, ". . .different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

Effectiveness of Provisional Voting
The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology (what is meant by this statement) and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available. (Are polling places posting their provisional voting signs? Are election judges doing their jobs?)

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

Not knowing the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

Estimates of Votes Lost In 2000 Presidential Election

Votes Lost (Millions)	*Cause*
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

Table 1 Cal Tech – MIT Voting Technology Project Estimates
4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then,

might be 40% to 50% (ballots counted/votes lost)[*]. (this is unclear. What is trying to be said? Is a comparison of the # of provisional ballots actually counted to the MIT estimate of lost ballots in 2000 being made? If so, would the MIT survey be influenced by the implementation of statewide voter registration databases or other interim measures that would improve the quality of voter registration lists?) Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states[17] came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.[18]

Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

The issue of counting provisional ballots cast in the wrong precinct was addressed by Colorado, Arkansas, and North Dakota. How was it addressed?

Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

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[*] Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of"registration mix-ups" to assess the states' registration systems after each election when it asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

[17] Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

[18] The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the *entire department's employees were mobilized to process provisional ballots.*" The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny. See Appendix 7, GAO, "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.

- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.

- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

Need for Promulgation of Best Practices
Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. This is false. If they are registered (the voter registration database is checked as required by HAVA or restricted by state requirement) the provisional counts. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Recommendations for Best Practices
Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity

among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

Self-evaluation of Provisional Voting –4 Key Questions (Best practice suggestion?)
The first recommendation is not for a specific procedure, but rather for a way of thinking about provisional voting. As legislators and election officials in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?

2. Is the system sufficiently robust (what system – the voting system or the procedures for provisional voting?) to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and with litigation looming?

3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

Best Practices For Each Step In The Process
We examined each step of the provisional voting process to identify specific areas where the states should focus their attention, and we offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process. (State how were these particular best practices chosen or arrived at?)

The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result-- well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of

the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."[19]

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.[20] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.

- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[21] (does this mean that the state should provide poll workers training? Most provided by local election jurisdictions. Is the recommendation to deviate from current practice?)

- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [22] Recent legislation in Arizona indicates that HAVA's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot. [23]

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States

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[19] The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

[20] See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

[21] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

[22] *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

[23] *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency. "[24]

2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[25]

3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information. Why not recommend local websites to do the same as state sites?

B. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. It's the law. Do they understand that all have to do this? Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[26] After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." [27] Most states require this. It is not new. In fact, Florida's statutory training provisions are among the highest in the nation.. Such statutory direction could help other states ensure uniform instruction of poll workers.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

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[24] Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

[25] The Century Foundation, op. cit.

[26] 8 Colo. Code Regs. § 1505-1, Rule 7.1.

[27] 2005 N.M. Laws 270 page no. 4-5.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [28] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[29]

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.[30] Seems like most states require training; do they have data on that? Florida's statutory training provisions among the strongest in the nation.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."[31] Nonetheless, the *Panio v. Sutherland*[32] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the

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[28] Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

[29] Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j.Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

[30] 10 Ill. Comp. Stat. Ann. 5/18A-10(b). Indiana requires that the precinct election board give the ballots to the Inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4

[31] The Century Foundation, op. cit.

[32] 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.[33]

2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct.[34] The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report. EAC Chairman: does not agree w/ this recommendation. It does not take into account for local offices that would not be voted upon w/ such practices. Voters would then not be directed or go to their correct polling place to cast a ballot.

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location.[35] Can the best practice be to send voter to correct precinct – if its in the same building as suggested in this recommendation. Why disenfranchise voter from voting on a local race?

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed

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[33] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

[34] See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

[35] Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[36]

Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
RRD	(Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to

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[36] 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available. Why is it suggested that completing eligibility evaluations are more critical in presidential elections? What about gubernatorial elections?

E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public. The process *not* the names since by law they cannot be revealed.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what constitutes a successful provisional voting system is difficult. As noted earlier, the most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations (what is meant by national quality organizations? Examples?) to evaluate the provisional ballot process within the broader context of the electoral system.

Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.

2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
    -- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
    -- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
    -- Measures of variance among jurisdictions.
    -- Number of poll workers trained in administration of provisional voting by polling place
    -- Number of jurisdictions posting information on provisional voting in the polling place
    -- Time required to evaluate ballots by jurisdiction

Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

Conclusion -- Research-based, continuing improvements for provisional voting are needed (This section should be the first part of the document)

The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

(Should this section be put under a Research Methodology section at the beginning?)
To answer those questions, the Eagleton-Moritz team undertook the following research efforts:

1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.

3. Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approached to voter identification
4. Collection and review of the provisional voting statutes and regulations in all 50 states.
5. Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research-based recommendations provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states moved forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

ATTACHMENT 1 -- Characteristics of the Provisional Voting Process Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The variables used to analyze a state's use of provisional ballots:

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1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting[37] and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as "old" states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline's map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct's list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter's name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island's first use of provisional voting was in 2004 and, therefore, classified the state as "new" to the system of provisional balloting.

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[37] This study can be found at: http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf.

Table 1
CATEGORIZATION OF STATES -- Old vs New

Old States	**New States**	**HAVA Exempt or NA**
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
26	**18**	**7**

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[38] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

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[38] "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf

Table 2 (This table is no longer germane.)
CATEGORIZATION OF STATES -- Statewide Registration Database

Had Database 2004	**No Database A-N**	**No Database N-W**	**HAVA Exempt or NA**
Alaska	Alabama	Ohio	Iowa
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Idaho	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
16	**27**		**8**

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election[2]. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

Table 3
CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots

Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado (after the court case)	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois (Not sure the law is that clear. Please check different counties did it differently.)	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	**26**	**7**

Voter Identification

We relied on Electionline studies, including the Voter Identification study[39] and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.[40] The five

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[39] This study can be found at: http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf

[40] In 2004, ElelctionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

Table 4

CATEGORIZATION OF STATES -- Forms of Identification Required

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Give Name	**Sign Name**	**Match Signature**	**Provide ID**	**Photo ID**
Maine	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
New Hampshire	*Idaho*	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
Wisconsin	Michigan	West Virginia	Georgia	
Wyoming	Minnesota		Kentucky	
	Mississippi		Missouri	
	Nebraska		Montana	
	New Mexico		*North Dakota*	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
9	14	8	15	5

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

Table 5

CATEGORIZATION OF STATES -- Ballot Evaluation Methods

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis. No states have been italicized. Is this correct?

Signature Match	Data Match	Affidavit	Return with ID	NA
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina*
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

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* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

Table 6
Updated information by State

Received Updated Data	Did Not Receive Updated Data
California	Alabama
District of Columbia	Alaska[41]
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland[42]	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska[43]	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
26 States	**25 States**

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[41] Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

[42] Maryland reported provisional ballots that were counted per county, but not number cast.

[43] Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

Data Differences

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.
Please explain the 0/8022 discrepancy under North Carolina "differences" since you indicate the info was not updated from the database.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	53,698/26,092	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

ATTACHMENT 2 -- Data

Table 1 -- Provisional Voting Basic Statistics

States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Alabama	Affidavit	0.10	28.00
Alaska	PV	7.20	97.00
Arizona	PV	3.66	73.00
Arkansas	PV	0.35	48.00
California	PV	3.96	74.00
Colorado	LPV	1.84	76.00
Connecticut	None	0.03	32.00
Delaware	None	0.01	6.00
District of Columbia	PV	3.51	71.00
Florida	PV	0.13	36.00
Georgia	None	0.12	30.00
Hawaii	None	0.01	7.00
Idaho	EDR	EDR	EDR
Illinois	None	0.42	51.00
Indiana	None	0.02	15.00
Iowa	PV	0.53	52.00
Kansas	PV	2.68	70.00
Kentucky	Affidavit	0.01	15.00
Louisiana	None	0.12	40.00
Maine	EDR	EDR	EDR
Maryland	PV	1.33	65.00
Massachusetts	None	0.08	23.00
Michigan	Affidavit	0.07	58.00
Minnesota	EDR	EDR	EDR
Mississippi	Affidavit		
Missouri	None	0.12	40.00
Montana	None	0.08	55.00
Nebraska	LPV	1.71	78.00
Nevada	None	0.29	40.00
New Hampshire	EDR	EDR	EDR
New Jersey	LPV	1.96	55.26
New Mexico	PV	1.16	57.00
New York	PV	3.27	40.30
North Carolina	PV	1.21	55.00
North Dakota	NR	NR	NR
Ohio	LPV	2.20	78.00
Oklahoma	None	0.01	8.00
Oregon	PV	0.39	85.00
Pennsylvania	None	0.45	49.00
Rhode Island	None	0.23	46.00
South Carolina	PV	0.20	65.00
South Dakota	None	0.02	12.00
Tennessee	None	0.14	38.00
Texas	Affidavit	0.10	21.00
Utah	None	2.00	70.00
Vermont	None	0.01	37.00
Virginia	PV	0.02	17.00
Washington	PV	2.44	80.00
West Virgina	PV	1.11	63.00
Wisconsin	EDR	0.00	32.00
States	**PV Status Pre-HAVA**	**PV % of the Vote**	**PV % of the vote Counted**
Wyoming	EDR	0.01	25.00

When did Eagleton get the information for Missouri. Missouri enacted provisional voting in 2002 and it is likely it was in place for the November 2002 election Pre-HAVA.

Eagleton's PV, LPV, EDR notations are confusing. In the instance of Colorado, the LPV designation (in the PV Status row - HAVA column is incorrect.) In Colorado the voter did not have to vote in the precinct.

"Tom O'neill"
[redacted]
02/21/2006 02:47 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Meeting with EAC in March

Thanks, Karen

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, February 21, 2006 2:22 PM
[redacted]
Cc: aambrogi@eac.gov; asherrill@eac.gov; sbanks@eac.gov; ecollver@eac.gov; nmortellito@eac.gov
Subject: Re: Meeting with EAC in March

Tom-

I will begin to poll the Commissioners to get a sense of when they might be available to do a "close out " meeting with Eagleton.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

[redacted]

02/21/2006 10:45 AM

To klynndyson@eac.gov
cc
Subject Meeting with EAC in March

Karen,

The Eagleton-Moritz team would like to schedule a meeting with the EAC in March. It would be the final substantive meeting on our contract, which expires at the end of March.

The agenda would include:

1. Brief the Commission on the principal findings and recommendations of the Voter ID research and hear questions and comments on that work.
2. Discuss the changes we made to the Provisional Voting paper as a result of comments and questions from the Commission.
3. Explore the Commission's intentions for the use of our work as recommendations for best practices or otherwise.

I believe the meeting should take place after you receive the Voter ID paper from us in the first week of March, and ideally after the Commission staff has had enough time for a preliminary review of it.

The earlier we could set a date for this meeting, the more key members of the team would be able to participate.

Tom O'Neill

"Tom O'neill"
[redacted]
02/21/2006 10:45 AM

To klynndyson@eac.gov
cc
bcc
Subject Meeting with EAC in March

History: This message has been replied to.

Karen,

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The agenda would include:

1. Brief the Commission on the principal findings and recommendations of the Voter ID research and hear questions and comments on that work.
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Tom O'Neill

Amie J. Sherrill/EAC/GOV
02/17/2006 02:28 PM

To Karen Lynn-Dyson/EAC/GOV
cc
bcc
Subject working group

History: This message has been replied to.

is there a working group for the provisional voting/voter id project?

Amie J. Sherrill
Special Assistant to Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106

"Tom O'Neill"
[redacted]
02/16/2006 10:58 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: January Progress Report

History: This message has been replied to.

Thanks, Dan.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 16, 2006 5:09 PM
[redacted]
Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
Subject: RE: January Progress Report

Shall we say February 28 at 3:00 PM?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]
02/16/2006 03:33 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com
Subject RE: January Progress Report

Karen, I'll survey the group about the best time for a conference call. The 24th does not look like a good time. We have a teleconference with the Peer Review Group on the Voter ID paper scheduled for Feb. 22, and therefore would be hard-pressed to review the précis of your comments in time for a discussion on the 24th. The next week would be more promising, perhaps Tuesday, Feb 28 in the afternoon.

We still plan to deliver the Voter ID paper to you the first week in March.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 16, 2006 1:33 PM
[redacted]
Cc: arapp@rci.rutg; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
Subject: Re: January Progress Report

Tom-

I have now received comments back on the Provisional Voting Best Practices document, from all of EAC's senior staff. I am in the process of combining these comments into one document, and will get the copy to you by mid-week next week.

By-and-large the comments are not major. The comment of greatest magnitude relates to the fact-checking process and the overall accuracy of regarding Eagleton's/Moritz' recording of

States' previous experiences with provisional voting.

Overall, the Commission is continuing to review its option of issuing guidance on this topic, along with best practices.

Shall we schedule a conference call for Friday, February 24 at 10:00 AM to go over the EAC's comments and Eagleton putting the finishing touches on its report?

Also, when should the EAC expect the Voter ID document?

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill"
[redacted]
02/16/2006 03:33 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu,
bcc
Subject RE: January Progress Report

History: This message has been replied to.

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Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 16, 2006 1:33 PM
[redacted]
Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
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Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]
02/16/2006 10:34 AM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu,
bcc
Subject January Progress Report

History: This message has been replied to.

Karen,

Our Progress Report for January is attached. Please note that Rutgers will submit a combined financial report for January and February at the end of this month.

Tom O'Neill

Progress Report January06.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
January 2006

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

February 14, 2006

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.7
    - Task 3.8
- Voter Identification Requirements
    - Task 3.10
    - Task 3.11
- Project Management
    - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from January 1 through January 31, 2006. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In January we completed the analytic work on the effect of various voter ID regimes on turnout and produced a draft of the report of that work, which continues to be refined. It will form a critical part of the report to the EAC on voter identification requirements, as will the legal research that has been completed by the Moritz team. We have been in regular contact with the Peer Review Group to arrange a date for it to comment on the draft of the Voter ID analysis and recommendations. (That meeting has now been set for February 22.)

We continued to await the EAC's comments on our Provisional Voting analysis paper (general comments accepting the paper were received on February 10). Since the submission of our Provisional Voting report to the EAC on November 28, 2005, our efforts have been entirely aimed at the completion of the voter identification research.

During the month, we made good progress on the revised schedule for the project. Our request for a non-cost extension through March was approved by the EAC, and we are tracking the schedule provided with the request for that extension. As a result of such unanticipated delays we have revised the schedule for the project.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting. Please direct questions or comments about this report to tom_oneill@verizon.net or by telephone at (908) 794-1030.

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. In January, we awaitedcomments from EAC on the draft report.

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we await the EAC's decision on how to proceed.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, which is now the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is now complete. It constitutes the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: In January, we focused on reviewing and analyzing current voter identification litigation nationwide. We drafted a memo summarizing the two most significant cases, *Common Cause/Georgia v. Billups,* and *Indiana Democratic Party v. Rokita*, which challenged new voter id laws in Georgia and Indiana, respectively. We also wrote a memo summarizing the dismissed 9th circuit case, *Friendly House, et al. v. Janet Napolitano, et al.*, which challenged the voter ID provisions of Arizona Proposition 200. Moritz and Eagleton continued to work closely together to identify and analyze the most important issues and best practices in the area of voter identification. Moritz and Eagleton have reviewed all research, clarified the categorization of that research on our charts, and reconciled the research categories used in the two different analyses. Some states continue to resist easy categorization. We continue to wrestle, for example, classifying Florida, which has a photo ID requirement, but allows a prospective voter lacking ID to execute an affidavit and cast a regular, not a provisional, ballot.

Work Plan: In the remaining two months of the project, Moritz and Eagleton will continue to work together to develop policy guidance and best practices in the area of voter identification, based on our combined research and the case law. We will work closely with Eagleton and our Peer Review Group to produce a document for the EAC summarizing voter identification and suggesting best practices. We will work with the EAC to finalize our report on provisional voting.

RESEARCH EFFORTS

We continued to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification. We resolved many, but not yet all, of the difficulties involved in determining the 2004 status of the states, especially because most of this material is gathered from state websites which at this point have been updated since 2004.

VOTER ID AND TURNOUT ANALYSIS

The statistical analysis to gauge the effect of a state's voter ID regime on turnout was reviewed and refined in January. The refinement included a re-categorization of the states according to different levels of ID requirements. The critical difficulty was in determining which forms of ID must be shown and which could merely be requested. After reviewing summaries of the statutes, we revised our classification in order to allow the statistical researchers to get a more leverage on the analysis of the impact of voter identification requirements both on the casting of provisional ballots and on turnout.

Description: We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

Progress: Our findings continue to suggest that voter ID requirements have their greatest effect at the registration stage, as opposed to the turnout stage. In January we added a number of control variables to the analysis and continue to examine and reflect on the results. We look forward to a discussion of our methodology and findings with the Peer Review Group.

Challenges: The models we are using, while sophisticated, are difficult to run and interpret. The analyses are time-consuming.

Work Plan: We will complete a draft of the Voter ID report for the EAC in February.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: We updated PRG members on the progress of our research and canvassed them to set a date in February for review and comment on our Voter ID analysis. We also plan to share with the group the EAC's comments on the Provisional Voting paper due to the delays in getting the EAC's feedback on our report. We have asked the PRG

Challenges: No new challenges were encountered.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added. During December we rearranged the folders on the hard drive and created a master document detailing which folder each report, memo, or data source could be found in.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

As we advised the EAC in our request for a no-cost extension to the contract, which EAC approved January, we will not submit an invoice for expenses for January, but rather will submit a combined invoice in early March for January and February.

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. The contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from the project during the period January 1- February 28,, 2006, will be sent in early March under separate cover to Ms. Dianna Scott, Administrative Officer at the EAC.

Juliet E. Thompson-Hodgkins/EAC/GOV
02/13/2006 11:31 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject EAgleton Comments

History: This message has been replied to.

Karen,

I have reviewed the Eagleton final report and have a couple of questions for clarification:

1. On page 8, in the paragraph after the bulleted information, they list ?high mobility? as a factor for the effective operation of provisional voting factors. There is no previous mention of this as a factor. What research do they have to back up naming this as a factor?
2. On page 10, line 2, the sentence begins ?A rough estimate?? I have no idea what they are trying to say here. Is it that they are trying to compare the number of provisional ballots actual counted to the estimate that MIT made of lost ballots in 2000? If so, then they need to consider in making this statement whether the MIT survey would be influenced by the onset of statewide voter registration databases and interim measures that have been instituted by election officials that would improve the quality of the voter registration list and thus limit the need for provisional ballots.
3. On page 13, second bullet, do they literally mean that the state should provide poll workers training? Most of this training is provided in actuality by the local election jurisdiction (county, municipality). Are they deviating from the current practice?

I have many other comments that are more appropriately directed to the Commissioners in considering what has been provided by Eagleton in terms of what they desire to make ?guidance? or ?best practices?.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"Tom O'neill"
[redacted]
02/09/2006 02:22 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Schedule for review of Provisional Voting paper

John, I did talk about the review with Ray Martinez and Paul DeGregorio yesterday, and they assured me the topic was on their agenda for the meeting this morning. Karen called this morning to tell me she was going into the meeting, and she asked about the schedule for our completion of the Voter ID paper. I told her she'd have it by the end of the month. (I think we should schedule now a meeting in March to brief the Commissioners on Voter ID and –in effect—bring the project to a close. Ray told me we should schedule that meeting soon since their agenda is filling up.)

So, I will take credit for breaking the logjam only if I get no blame for not having done it sooner.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 09, 2006 1:18 PM
[redacted]
Cc: john.weingart@rutgers.edu
Subject: Re: Schedule for review of Provisional Voting paper

Late breaking news-

By next Tuesday I will get, to you, a series of clarifying questions that the Commissioners will have provided me regarding the Provisional Voting Best Practices Document.

They approved the format of the document, but did suggest an Executive Summary at the beginning, which would explain the process, including how the best practices criteria and recommended best practices were arrived at by the Project Working Group.

The conclusions on Page 19 should be at the front, rather than the back of the document.

The format used for this document is a good and acceptable one that should be followed for your forthcoming Voter ID Best Practices document. The Commissioners look forward to receipt of this in early March.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>
02/06/2006 05:37 PM
Please respond to john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
bcc
Subject Re: no-cost extension

History: This message has been replied to.

Karen - Basically, we feel it would be more efficient to combine the January and February invoices. Now that the EAC has agreed to the no-cost extension, we have to extend the time table and dollars attached to the subcontract Eagleton has with Ohio and the consulting agreement we have with Tom O'Neill. Until that paperwork has been processed by all the necessary parties, Rutgers will not allow us to pay invoices submitted by Ohio or O'Neill beyond the original terms (which ended on December 31st). In addition, because we did not receive the no-cost extension paperwork back from the EAC until the end of January, Eagleton did not directly bill various expenses that were incurred in January and must now be transferred to the EAC account for that period.

I hope this provides the explanation you need. Thanks.

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

\>
\> John-
\>
\> Could I get a brief explanation of the request for the combined invoice?
\>
\> I don't believe its a problem, but the contract does stipulate monthly
\> invoices.
\>
\> I'll check into this.
\>
\> K
\>
\> Karen Lynn-Dyson
\> Research Manager
\> U.S. Election Assistance Commission
\> 1225 New York Avenue , NW Suite 1100
\> Washington, DC 20005
\> tel:202-566-3123

"John Weingart"
<john.weingart@rutgers.edu>

01/25/2006 01:46 PM

Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>

cc "Lucy Baruch" <baruch@rci.rutgers.edu>

bcc

Subject no-cost extension

History: This message has been replied to.

Karen - I just received a fax of the no-cost extension request. The last line of section14 refers to a completion date of February 13. Is it possible to change that to the date we had requested, March 31? If the answer to that question will take some time, we could process this paper through the University (Our Office of Research and Sponsored Programs has to provide the requested signatures) and then process a subsequent page extending from Feb 13 to the end of March.

Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

"Tom O'Neill" [redacted]
02/06/2006 03:35 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: no-cost extension

Thanks, John. I'll see Degregorio at least on Tuesday and will see what I can find out from him. Others from EAC may be at the session as well.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, February 06, 2006 12:25 PM
To: john.weingart@rutgers.edu
Subject: Re: no-cost extension

John-

I assume the no-cost extension process is now completed.

I am told that review of your Best Practices document will be completed this week.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Tamar Nedzar/EAC/GOV
01/25/2006 12:56 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: no-cost extension status

History: This message has been replied to.

Karen,

Faxed the SF30 to Weingart to sign and fax back to us. After that, I'll give that piece of it to Tom to sign, but he won't be back in the office until Monday. Once he signs, Aime will give all the paperwork to the Chairman for his signature. When everything is signed, it will come back to you to send out or do whatever else needs to be done. My feeling is that the earliest the work can get done is by Tuesday.

This is a fun excercise!
Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

-----Karen Lynn-Dyson/EAC/GOV wrote: -----

To: Tamar Nedzar/EAC/GOV@EAC
From: Karen Lynn-Dyson/EAC/GOV
Date: 01/25/2006 12:31PM
Subject: Fw: no-cost extension status

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 01/24/2006 12:28 PM -----

Thanks.

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>

> John-
>
> The papers are now with the Chair (Paul DeGregorio) for his signature.
> I have asked that the process be completed not later than Thursday.
>
> K
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

"John Weingart"
<john.weingart@rutgers.edu>
01/24/2006 01:56 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
bcc
Subject Re: no-cost extension status

History: This message has been forwarded.

Thanks.

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> John-
>
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>
> K
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

"John Weingart"
<john.weingart@rutgers.edu>
01/23/2006 10:50 AM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc
bcc
Subject no-cost extension status

History: This message has been replied to.

Hi Karen - Do you think we can get approval of our no-cost extension request this week? We really need it for the Rutgers administrative processes since, from their point of view, the project concluded on December 31st. Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Nicole Mortellito/CONTRACTOR/EAC/GOV

01/20/2006 02:01 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Re: Please provide me with a hard copy of the Eagleton cost proposal, when you can

History: This message has been forwarded.

EAC Eagleton Institute Budget 3-22-05-1.xls

Regards,

Nicole K. Mortellito
Special Projects
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

01/20/2006 12:54 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

cc

Subject Please provide me with a hard copy of the Eagleton cost proposal, when you can

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Eagleton Institute of Politics, Rutgers The State University of New Jersey
US Election Assistance Commission Project Budget (3/22/05)

Description	Budget	
Personnel		
Eagleton faculty/senior staff	35,000	Mandel, Weingart, Reed, Linky (various percentages)
Eagleton staff: logistics/administrative/clerical	15,000	(various percentages)
Fringe (32.5%)	16,250	
	66,250	
Hourly Personnel		
Research Coordinator	21,250	1250 hours at $17 per hour
Logistics/Admin Coordinator	12,325	725 hours at $17 per hour
Research assistants	7,200	300 hours at $12 per hour for two researchers
Fringe on Hourly (9%)	3,670	
	44,445	
Subtotal Personnel Expenses	**$110,695**	
Honoraria		
Honoraria for Peer Review Group	**10,000**	10 at $1,000
Public Hearings (3 in 3 cities)		
Public Hearings	75,000	3 hearings at $25K per EAC figures
2 Hearings in DC- train, ground, lodging, meals*	3,480	attended by 3 staff
1 Hearings in St. Louis- air, ground, lodging, meals**	2,640	attended by 3 staff
	81,120	
Briefings/Meetings with EAC		
Train, ground, lodging, meals***	**5,200**	5 briefings in DC, attended by 2 staff
General Operations		
Office supplies, software, telephone, copying, postage	10,000	
Desktop computers, laptop, printer	10,000	
	20,000	
Subcontract		
Project Director- O'Neill	**79,500**	80% time April – Aug., 60% Sept. – Oct.
Ohio State University- Legal Analysis	**84,744**	Partner institution, Moritz College of Law, OSU
Subtotal Non Personnel Expenses	**$280,564**	
Subtotal All Direct Cost	**391,259**	
Modified Total Direct Cost $277,015****		
F&A on Modified Total Direct Cost (55.5%)	153,743	Rutgers University federally approved rate.
TOTAL Project Budget	**$545,002**	
Optional Surveys		
State Election Officials	15,000	Eagleton
Young Voters	25,000	Eagleton
Provisional Voting, 1st state	116,000	OSU Political Science
Provisional Voting, 1st additional state	75,000	OSU Political Science
Provisional Voting, 2nd additional state	60,000	OSU Political Science
Total Optional Surveys (no F&A)	**$291,000**	

* Travel and lodging to two hearings in DC includes $260 for train fare to DC, $200 for hotel/lodging, and $60 per day for two days for meals= $580 per person per trip for three people.

** Travel and lodging to one hearing in St. Louis includes $500 airfare to St. Louis, 2 nights hotel/lodging at $100, and $60 per day for three days for meals= $880 per person for three people.

*** Travel and lodging to five Briefings/Meetings with EAC includes $260 for train fare to DC, $200 for hotel/lodging, and $60 for meals= $520 per person per trip for two people.

**** Modified total direct cost is equivalent to total direct cost except for two items - F&A included only on first $25K of subcontract with Project Director ($79,500) and first $25K of subcontract with OSU ($84,744).

"Tom O'Neill" [redacted]
01/17/2006 02:19 PM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu
bcc
Subject December Progress Report

History: This message has been replied to and forwarded.

Karen,

Attached is our progress report for December. Still eager to learn the schedule for the completion of the review of our analysis and recommendations on provisional voting.

Tom O'Neill

Progress ReportDecemberTON.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
December 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

January 16, 2006

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.7
    - Task 3.8
- Voter Identification Requirements
    - Task 3.10
    - Task 3.11
- Project Management
    - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from December 1 through December 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In December we continued to make progress in the research needed for the draft report on voter identification requirements. We completed a careful review of data on the effect of various voter id regimes on turnout and worked to reconcile that information other sources and identified the latest, most reliable information to use in the analysis.

We still await the EAC's comments on our Provisional Voting analysis paper, which included our recommendations to the EAC for best practices. Since the submission of our Provisional Voting report to the EAC on November 28, 2005, our efforts have been entirely aimed at the completion of the voter identification research. We have been advised that EAC will take several weeks to review and react to our final draft on provisional voting.

As a result of such unanticipated delays we have revised the schedule for the project. Early in this reporting period, we requested from EAC a no-cost extension of the contract through the end of February. At this point, we have extended the no-cost extension request through March, so that we will have adequate time to revise our report once we receive feedback from the EAC.

In the meantime, as we await a response from the EAC, we are moving ahead quickly on the statistical analysis of voter identification data and summarizing the legal research that was completed earlier. We are working with the Peer Review Group to arrange a date for it to comment on the draft of the Voter ID analysis and recommendations.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to tom_oneill@verizon.net or by telephone at (908) 794-1030.

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. We await comments from EAC on the draft report.

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. That recommendation followed agreement by the EAC with that course of action. The submission of that report and recommendations, however, constitutes the document required under this task. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we await the EAC's decision on how to proceed.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is the principal focus of our research at this time.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: We have completed: the 50 state (plus D.C.) chart, the collection of voter identification statutes for all states and D.C., and summaries of the existing voter identification statutes. Moritz has completed its review of voter identification litigation and has summarized the results in a memo. Moritz and Eagleton have reviewed all research, clarified the categorization of that research on our charts, and reconciled the research categories used in the two different analyses.

Challenges: The biggest challenge in the reconciliation process is understanding the comparative strengths of different primary source materials. Despite the necessity this has created to reconcile conflicting data from time to time, the collaboration has strengthened the rigor of our efforts by shining a light on the raw data.

Work Plan: During January, we will continue our analysis of our voter identification research, and we will complete the memo summarizing the major litigation surrounding voter identification requirements. We will identify the most important issues and best practices in the area of voter identification, and to develop our voter identification document for the EAC.

RESEARCH EFFORTS

To complement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of

HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

In the upcoming month, Eagleton will continue to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification. The difficulty will be determining the 2004 status of the states, especially because most of this material is gathered from state websites which at this point have been updated since 2004.

VOTER ID AND TURNOUT ANALYSIS

The statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters, as projected, was completed during the month of December.

Description: We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. In November, we have analyzed both aggregate- and individual-level data to determine whether there is any relationship between voter turnout and the various forms of voter identification states require.

Progress: During December, the analysis was completed for two data sets: County-level data that includes registration and turnout rates for 2000 and 2004, as well as Census measures and indicators of the type of voter identification requirements that were in existence at the time of the 2004 presidential election. The second data set consists of the voter supplement to the November 2004 Current Population Survey. This data set allows for testing of the same hypotheses at the individual level. The findings from the aggregate data set suggest that voter ID requirements have their greatest effect at the registration stage, as opposed to the turnout stage. A number of control variables were added to the analysis and the results of these efforts will be summarized in our report.

Challenges: These analyses use hierarchical linear modeling. Because voter identification requirements vary by state, one must pay special attention to other, unseen state-level influences on the data. The models are difficult to run and interpret, so the analyses are time-consuming

Work Plan: We will draft the findings from the statistical analyses by the end of January. The report will tie these findings to the research findings summarized in the litigation memos to create our first draft Voter Identification report.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: During the month of December, Eagleton contacted the PRG Members to reschedule the potential conference call session for mid-February due to the delays in getting the EAC's feedback on our report. We have asked the PRG members to reserve a couple of dates in mid-February for a conference call meeting to review the Provisional Voting report with the EAC's comments and the first draft of our Voter Identification Report.

Challenges: No new challenges were encountered during December.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added. During December we rearranged the folders on the hard drive and created a master document detailing which folder each report, memo, or data source could be found in.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project December 1- December 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

"John Weingart"
<john.weingart@rutgers.edu>
01/09/2006 03:26 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
bcc
Subject Re: No Cost Extension Request

History: This message has been replied to.

Karen - Just wanted to let you know that we're working on our response and should have it to you tomorrow or Wednesday at the latest. Thanks

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

> John-
>
> Attached please find a copy of a portion of the memo that is part of the paperwork related to the no-cost extension.
>
> While I am the Contracting Officer Representative on this project, I never received your project's cost proposal, and am unable to locate a copy. Otherwise, I would have completed more of the chart.
>
> Please, take a moment to fill in the information on the attached chart, and, if you could, have one of the Eagleton staff send me the cost proposal which originally accompanied the technical proposal.
>
> Thanks so much.
>
> Regards-
>
> K
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

"Tom O'neill"
<tom_oneill@verizon.net>
11/14/2005 05:27 PM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com, Vincelli@rutgers.edu, arapp@rci.rutgers.edu, davander@eden.rutgers.edu,
bcc
Subject FW: October Progress Report

History: This message has been forwarded.

Tom O'Neill

-----Original Message-----
From: Tom O'neill [mailto:tom_oneill@verizon.net]
Sent: Monday, November 14, 2005 5:26 PM
To: klynndyson@eac.gov
Cc: Vincelli@rutgers.edu; arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; ireed@rutgers.edu; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; rmandel@rci.rutgers.edu; 'Johanna Dobrich'; tokaji.1@osu.edu; foley.33@osu.edu; lauracw@columbus.rr.com
Subject: October Progress Report

Karen,

Attached is the Progress Report for October. Please note that this report includes at attachment showing how our study classifies each state on key variables, such as counting out-of-precinct ballots, requirements for ballot evaluation, and other variables. It also displays how the data we used differs for some states for the vote counts reported by the Election Day Survey. We believe that our data is more accurate and complete (see for example the data for New Mexico and Pennsylvania).

I look forward to responding to any questions or concerns you or others at the EAC may have.

Tom O'Neill

OctoberFinal.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
October 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

November 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.5
- Voter Identification Requirements
    - Task 3.10
    - Task 3.11
- Project Management
    - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from October 1 through October 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In October we focused on finalizing our Provisional Voting analysis paper, including the development of recommendations to the EAC for a draft guidance document and best practices. These policy prescriptions are based on our research and the comments of the Peer Review Group. We completed a careful review of our data to reconcile it with other sources and identify the latest, most reliable information to use in the analysis. (See the attachment to this Progress Report for the details.) The importance of this demanding effort was described in September's Progress Report.

Also in October we revised the schedule for the project in light of the additional time that has been needed for review of earlier drafts by the EAC and the late completion of the Election Day Study. We will seek a meeting with the EAC in the next several weeks to confer about the schedule to complete the project and alternative approaches that could speed the conclusion of our work.

We will submit to the EAC a final draft of our report, a preliminary guidance document, and draft best practices before Thanksgiving. We project that EAC will take 3 to 4 weeks to review and react to that final draft. And we understand that after its review, the EAC will decide if it should move towards issuing a Guidance Document or recommending best practices. If the EAC does decide to issue a Guidance Document on Provisional Voting, the time needed for a review by the advisory boards is likely to delay a public hearing until early February.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to tom_oneill@verizon.net or by telephone at (908) 794-1030.

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, Tasks 3.5 and 3.6 are nearing completion.

Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of Provisional Voting and develop alternative means to achieve the goals of Provisional Voting.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with Provisional Voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on Provisional Voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and has completed this research.

Progress: We have completed the memorandum outlining Provisional Voting legislative changes since the 2004 election and we are continuing to clarify the laws prior to these changes.

Challenges: The variety in the form and frequency of Provisional Voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The final analysis will be sent to the EAC by Thanksgiving.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with Provisional Voting in 2004. The report findings from the survey of 400 local election officials are now complete. The survey results have proven to be instrumental in shaping our understanding of actual practice in administering Provisional Voting, including the steps local officials took to prepare for the election.

PROVISIONAL VOTING NARRATIVES

Description: To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with Provisional Voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to Provisional Voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

Progress: We completed a state-by-state narrative of developments in Provisional Voting and distributed it to the EAC and the PRG. This work has been helpful in understanding the context of the data collected on provisional voting from the states.

Challenges: The primary obstacle to constructing the narratives was difficultdy in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent several revisions to incorporate up-to-date and reliable information. Now that so many other analyses, including the Election Day Survey, have been released, we were challenged by different interpretations of the same basic facts. But the reconciliation of interpretation and data collection has been invaluable in establishing rigor in our report.

Work Plan: We completed revisions of the narratives incorporating comments from the PRG and addressing any discrepancies between our findings and other interpretations of similar information included in other studies.

PROVISIONAL VOTING STATISTICAL ANALYSIS

Description: During October the Eagleton research team continued to check its statistical analysis, and worked to reconcile the classifications of this analysis (such as states counting only those provisional ballots cast within the proper precinct versus states that counted ballots cast within the proper county) with the classification made in other parts of this study or in other studies (such as the Election Day Study or *Electionline* reports).

Progress: The effort to double check all of the classifications used in the study is complete. The results of this effort are displayed in the attachment to this progress report, "Characteristics of the Provisional Voting Process -- Classification of the States," beginning on page 9. Only Delaware and Arkansas remain unclear in regard to one of the measures, and both states have been contacted to receive clarification in this area..

Challenges: The difficulties encountered have been a result of communication delays and time constraints. Some states have been more responsive to our inquires about their practices than others. Overall, this is not an irresolvable problem but it does slow the process of completion down.

Work Plan: By early-November the final revision of the statistical analysis, which includes full reconciliation of all data within the study, will be complete. The reconciliation of data is displayed in the attachment to this progress report.

SURVEY OF COUNTY ELECTION OFFICIALS

Description: The Eagleton Center for Public Interest Polling (CPIP) conducted a national survey of county election officials to measure several aspects of Provisional Voting.

Progress: The analysis of the survey results and findings report is complete. As a result of the critique by the PRG, the research team is revising and clarifying the descriptions of the survey design and sample selection process to make the research methods more transparent.

Work Plan: We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5. We will include necessary clarifications regarding survey design and sample selection in the final analysis and alternatives document.

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations now nearing completion constitutes the draft preliminary guidance document. Based on our conversation with the EAC, the draft gives the EAC the option of proceeding with a guidance document or issuing recommendations to the state for best practices, recommendations that would not constitute voluntary guidance. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we will await the EAC's decision on how to proceed.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is becoming the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: The 50 State (plus the District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Work Plan: Analysis of voter identification data has begun and will increasingly become the central focus of our work.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election

Progress: The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also used exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout.

Challenges: The analysis of these data had been postponed until the data reconciliation of Provisional Voting is complete. As a result of the extensive revision and data reconciliation efforts aimed at the Provisional Voting section of our work VID had been temporarily placed on hold. We are now beginning data analysis on the impact of voter identification requirements on voter turnout.

Work Plan: The analysis of the impact that voter identification requirements have upon voter turnout should be completed by early December. Early January is our target to deliver the draft report and outline of alternative policies to the Peer Review Group. In mid January, the EAC would receive a draft report and recommendations that take into account the comments of the PRG.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: Eagleton has stayed in touch with members of the Peer Review Group since the September 21st conference call, and has solicited their final comments on the Provisional Voting research. During October, we telephoned two members who did not participate in the conference call to confirm their commitment to serving as members of the Peer Review Group. Profess Guy Charles affirmed his interest. Professor Pamela Karlan did not return the call. The revisions in the schedule for the project have now made it possible to begin the process of scheduling a meeting of the PRG to consider our draft report and recommendations on Voter Identification Issues. We anticipate that meeting will take place the second week of January.

Challenges: No new challenges were encountered during October.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project October 1- October 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

ATTACHMENT TO OCTOBER PROGRESS REPORT
Characteristics of the Provisional Voting Process
Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The categories analyzed here are:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting[1] and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as "old" states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline's map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct's list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter's name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island's first use of provisional voting was in 2004 and, therefore, classified the state as "new" to the system of provisional balloting.

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[1] This study can be found at: http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf.

Table 1
CATEGORIZATION OF STATES – Old vs New

Old States	New States	HAVA Exempt or NA
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
26	**18**	**7**

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[2] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases

---

[2] "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf

because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

Table 2
CATEGORIZATION OF STATES -- Statewide Registration Database

Had Database 2004	No Database A-N	No Database N-W	HAVA Exempt or NA
Alaska	Alabama	Ohio	Idaho
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Iowa	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
16	27		8

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election[2]. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

Table 3
CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots

Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	**26**	**7**

Voter Identification

We relied on Electionline studies, including the Voter Identification study[3] and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.[4] The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

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[3] This study can be found at: http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf

[4] In 2004, ElelctionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

Table 4
CATEGORIZATION OF STATES -- Forms of Identification Required
States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Give Name	Sign Name	Match Signature	Provide ID	Photo ID
Maine	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
New Hampshire	*Idaho*	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
Wisconsin	Michigan	West Virginia	Georgia	
Wyoming	Minnesota		Kentucky	
	Mississippi		Missouri	
	Nebraska		Montana	
	New Mexico		*North Dakota*	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
9	**14**	**8**	**15**	**5**

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

Table 5

CATEGORIZATION OF STATES – Ballot Evaluation Methods

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Signature Match	Data Match	Affidavit	Return with ID	NA
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina[*]
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

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[*] North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

Table 6
Updated information by State

Received Updated Data	Did Not Receive Updated Data
California	Alabama
District of Columbia	Alaska[5]
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland[6]	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska[7]	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
26 States	**25 States**

---

[5] Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

[6] Maryland reported provisional ballots that were counted per county, but not number cast.

[7] Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

Data Differences with Election Day Study

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	N/A	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

"John Weingart"
<john.weingart@rutgers.edu>
09/28/2005 04:01 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
bcc
Subject Re: EAC Conference Call - Friday 9/30

History: This message has been replied to and forwarded.

Karen - For our conference call this Friday at 1:30, participants should dial (877) 805-0964 and then when prompted enter: 869580#. Could you relay this information to Commissioner Martinez and the others from the EAC who will be on the call. At our end will be Tom O'Neill, Ingrid Reed and me.

Thanks, John

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

```
>
> Excellent-
>
> Friday at 1:30 it is.
>
> Please do let the EAC staff know what number to call.  Ray Martinez
> and Tom Wilkey may be calling from the road.  Julie Thompson and I
> will be here.
>
> Thanks, again
>
>  Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
>
>
> *"John Weingart" <john.weingart@rutgers.edu>*
>
> 09/27/2005 03:56 PM
> Please respond to
> john.weingart@rutgers.edu
>
>
>
> To
>            klynndyson@eac.gov
> cc
>            Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov,
> rmartinez@eac.gov, twilkey@eac.gov, arapp@rutgers.edu,
```

> davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu,
> ireed@rutgers.edu, iwreed@aol.com, joharris@eden.rutgers.edu,
> lauracw@columbus.rr.com, rmandel@rci.rutgers.edu, sampson.8@osu.edu,
> tokaji.1@osu.edu, "'Tom O'Neill'" <tom_oneill@verizon.net>,
> vincelli@rci.rutgers.edu, williams.285@osu.edu
> Subject
> Re: EAC Conference Call - Friday 9/30
>
>
>
>
>
>
>
>
>
> Karen - Let's do it on Friday at 1:30. From my initial polling, at least
> Tom O'Neill, Ingrid Reed and I will be available. Since we will not all
> be at the same location, would you like us to initiate a conference call
> from here and give you a number to call in to?
>
> -- John Weingart, Associate Director
> Eagleton Institute of Politics
> (732)932-9384, x.290
>
>
>
>
> klynndyson@eac.gov wrote:
>
> >
> > Eagleton/Moritz team-
> >
> > I'd leek to propose a conference call with EAC Commissioner Martinez,
> > General Counsel ,Julie Thompson, Research Manager Karen Lynn-Dyson and
> > your team for either *10:30 or 1:30 on Friday, September 30*.
> >
> > This will be to discuss the draft guidance and final report you will
> > be producing for the EAC.
> >
> > Please let me know which time works for you
> >
> > Regards
> > Karen Lynn-Dyson
> > Research Manager
> > U.S. Election Assistance Commission
> > 1225 New York Avenue , NW Suite 1100
> > Washington, DC 20005
> > tel:202-566-3123
>
>
>

Thomas R. Wilkey/EAC/GOV
09/26/2005 06:14 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Paul
cc Juliet E. Thompson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Eagleton Draft

We have received and are in the process of reviewing a draft of the Eagleton Report.
This is to be considered an internal working document and should not be released to anyone without the approval of the Commissioners.
Thank You
Tom Wilkey

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov

Sheila A. Banks/EAC/GOV
09/20/2005 01:57 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Eagleton Meeting With The Chair

Karen,

The Chair said it's your call as far as you and Tom meeting with her today. Please let me know. Tom is available around 3:30 p.m.

Thanks,
Sheila

"Lauren Vincelli"
<Vincelli@rutgers.edu>
09/15/2005 12:04 PM
Please respond to
Vincelli@rutgers.edu

To klynndyson@eac.gov
cc tom_oneill@verizon.net, jdobrich@eden.rutgers.edu
bcc
Subject August Progress Report - Eagleton Institute of Politics

History: This message has been forwarded.

Hi Karen,

Attached is the August progress report in fulfillment of our Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures. Please note, as per your instructions earlier this month, that the financial report will be sent via Fedex under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC. Also attached to the progress report is a finalized list of our Peer Review Group members. If you have any questions regarding this report, please contact Tom O'Neill at (908) 794-1030 or tom_oneill@verizon.net.

Have a great day,
Lauren Vincelli

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551

Progress Report_AUGUST2005_EagletonInst.pdf

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to The EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
AUGUST 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

September 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
  - Task 3.5
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from August 1 through August 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

Research on Provisional Voting and a draft of reports on the analysis and alternatives were substantially completed in preparation for the September 6 briefing for the EAC. Important reports such as the National Survey of Local Election Officials' Experience with Provisional Voting; Statistical Review Provisional Voting in the 2004 Election; State-by-state Narrative of Developments in Provisional Voting; and the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states, were all completed in August.

We made further progress on recruiting a balanced and authoritative Peer Review Group (which, as this report is written, is receiving all the documents listed above for review). Ingrid Reed of Eagleton will coordinate the work of the Peer Review Group. A list of the members of the Peer Review Group is attached.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to Tom O'Neill at:
[redacted]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, and Task 3.5 is well underway.

Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of provisional voting and develop alternative means to achieve the goals of provisional voting.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and is near completion with this research.

Progress: We completed the state by state summaries of provisional voting in August Also complete is a memorandum outlining provisional voting legislative changes since the 2004 election. This material was sent to the EAC as part of the package for briefing on September 6.

Challenges: The variety in the form and frequency of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The analysis of all the information, data, and survey results concerning provisional voting data will be completed in September, on schedule. The alternatives document should also be complete in September, pending response from the EAC on which direction those alternatives should follow.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. The report findings from the survey of 400 local election officials is now complete. The survey results improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

PROVISIONAL VOTING NARRATIVES

Description: To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

Progress: A state-by-state narrative of developments in Provisional Voting is complete and has been distributed to the EAC and the Peer Review Group. This work has been crucial to the process of constructing our draft analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

Challenges: The primary obstacle to constructing the narratives was difficultly in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent multiple revisions in order to incorporate the most up-to-date material available. Had the Election Day Study been available, this task would probably have been simplified considerably.

Work Plan: We completed revisions of the narratives.

SURVEY OF COUNTY ELECTION OFFICIALS

Description: The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting.

Progress: The analysis of the survey results and findings report are complete.

Work Plan: We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting, and is becoming the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: We are refining the 50 state (plus District of Columbia) chart of data on voter identification. So far collected are voter identification statutes for 35 states. Summaries of the existing voter identification statutes have been written for forty states.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The state by state voter identification statute summaries will be completed for the remaining ten states and D.C. and the review of the chart will be completed. Analysis of voter identification data will begin.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern, and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

Progress: The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also utilized exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout. The analysis of that data is underway.

Challenges: The main challenges to this task include gathering the complete set of changes to Voter ID laws over the past 5 years, and then incorporating those changes into a sound statistical methodology.

Projection: We will continue to work towards resolving the methodology issue, and ultimately produce a final report on this subject. The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-September.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). The Peer Review Group will review our research and methodology and provide valuable feedback and suggestions for the direction of our work.

Progress: The composition of the Peer Review Group has been determined and the membership has been submitted to the EAC. Additionally, as of the date of this report all PRG members have received their first mailing, which included several reports from our research, and a draft of our analysis and alternatives outline for their review.

Challenges: Our timeline for circulating and discussing our research with the PRG has been compromised due to delays in completing the recruitment of members of the group.

Projections: We are in the process of scheduling our first conference call with PRG members for the week of Sept. 19, 2005.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. As we near the end of the Provisional Voting research and move into the Voter Identification research, we will re-evaluate the volume of files contained in the Information System and update the system.

Projections: The entire project team continues to review all project drafts, and will staff members combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

Progress: Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project August 1 - August 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC .

ATTACHMENT:
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FINAL LIST (09/13/05)

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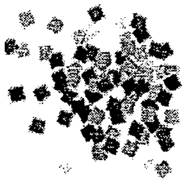

Amie J. Sherrill/EAC/GOV
09/14/2005 02:14 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

History: This message has been replied to.

Will do. What topic do you want me to use on the agenda?

Amie J. Sherrill
Special Assistant to Vice Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
09/14/2005 02:12 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

So, Aimee, guess you should put copies in the 4C's packets.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
09/14/2005 02:02 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

Yes

Thomas R. Wilkey

Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

09/14/2005 12:53 PM

To Amie J. Sherrill/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
cc
Subject Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

Tom-

Do you want this as an agenda item?

Aimee-

Will leave a copy of the document on top of your desk.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

[redacted]
09/05/2005 10:48 PM

To klynndyson@eac.gov
cc
bcc
Subject Materials for Sept. 6 Meeting

History: This message has been forwarded.

Karen:

Attached are 3 documents that will be topics of discussion at our meeting tomorrow. The Power Point presentation is included so you will have a complete file (and as a backup in case something goes wrong with the version I am bringing.)

The "Script" document is a simple, MS Word version of the Power Point presentation. You might want to print out copies for those who would like to follow along and make notes on the slides as they are discussed.

The third document is the "Alternatives" paper we will discuss after the Power Point presentation. It outlines alternative points that might be included in the preliminary guidance document, which is the next deliverable in the project. We hope to learn which alternatives are preferred by the EAC so that we will know which ones should be developed further for the Preliminary Guidance Document. I hope you might be able to have this duplicated and distributed to those attending the meeting.

Thanks. I look forward to seeing you tomorrow.

Tom O'Neill

ALTERNATIVESSept6.doc Briefinfg90605.ppt ScriptSept.605.doc

"Tom O'neill"
[redacted]
09/03/2005 02:46 PM

To klynndyson@eac.gov
cc
bcc
Subject Revised materials for Sept. 6 Meeting

History: This message has been replied to and forwarded.

Karen,

The hard copy of the materials you received on Friday may have been missing the response to Question 4 (the copy I received did not include it). Several other typographical and other errors also became apparent when I reviewed it today. .

Attached is a revised version of the package that corrects those errors. Please rely on this version to prepare for the meeting on Tuesday. I will bring sufficient copies to hand out before the meeting.

Sorry for the errors.

Tom O'Neill

EAC BRIEFING0906.doc

"Tom O'neill"
[redacted]
08/31/2005 02:42 PM

To klynndyson@eac.gov
cc
bcc
Subject September 6 Meeting

Karen,

As we discussed in our phone call earlier today, I will have a PowerPoint presentation for use at our meeting next Tuesday. I hope it will be possible for you to arrange for a projector and a computer with a USB port for our use that day. Have a good Labor Day weekend. See you at 1:30 on the 6th.

Tom O'Neill

DRAFT FOR COMMENT **Deliberative Process Privilege**

OUTLINE OF ALTERNATIVES

For Consideration In Drafting Preliminary Guidance on Provisional Voting
September 6, 2005

This outline identifies 7 areas where guidance from EAC could improve the provisional voting process.

EAC's guidance should strike a rational balance among the three competing objectives of ballot access, ballot security, and procedural reliability and practicality. The outline sketches a range of alternatives for the EAC. Based on the EAC's judgment about which alternatives it can embrace, we will develop appropriate recommendations for the guidance document.

Possible Criteria for evaluating alternatives and choosing among alternatives:

1. The electoral system must be able to collect, record, and tally the votes of the electorate with sufficient accuracy to declare a winning candidate whose victory is procedurally legitimate in the eyes of supporters and opponents alike. Second, no well-functioning electoral system would fail to provide or count a ballot cast by a properly registered voter who correctly completed all steps required to receive one. (Century Foundation/10)
2. Margin of Litigation – need a system robust enough to perform well under the pressure of a close election.
3. Enfranchisement rate –the percentage of eligible voters who are able to participate.
4. Voter satisfaction standard – degree to which voters believe the system meets their needs and provides an avenue of participation.

Elements influencing the performance of the provisional voting system

THE PROCESS

A. Registration

B. Pre-Election Information For Voters

C. At The Polling Place

D. Evaluating The Ballot

E. Post-Election Information For Voters

BROADER CONSIDERATIONS

F. Integrity And The Appearance Of Integrity

G. Continuous Assessment Of The Provisional Ballot -- Process And Performance (Quality Improvement Model)

INTRODUCTION
THE IMPORTANCE OF CLARITY AND IDENTIFICATION OF BEST PRACTICES

The guidance document should emphasize above all else the importance of clarity in the rules governing every stage and process of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."

State efforts to improve the provisional voting process are already underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from guidance that includes concrete descriptions of best practices. A best practice approach in the guidance document is likely to advance the adoption of provisional voting practices that should be standard across the country while recognizing diversity among the states.

ALTERNATIVES FOR EACH STEP IN THE PROCESS

A. Registration

Improving the registration system can forestall the need to cast a provisional ballot, and is therefore among the most important possible reforms.

1. Registration rules should be clear and to forestall post-election disputes about their interpretation.

2. If states require identification at the time of registration, the kind of IDs required should be stated precisely, in plain English, and be publicly available in a graphical form that all voters can understand, for example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency. "

3. If there is one place to sign an affirmation of citizenship and age (and/or mental capacity), and that is signed, the failure to check any box that refers to the aforementioned should not be deemed a material omission.

4. States should consider testing a modified system of voter registration. A voter who registers earlier than 60 days before Election Day would be guaranteed that administrators will . That voter will be able to vote by regular ballot. For those who register within 30 days of the election, administrators would still be expected to ensure the orderly processing of the registration, but such voters will not be guaranteed that if there is a problem with their application that they will be able to vote by a regular ballot. This two-tiered registration system could reduce post-election disputes.[1]

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[1] See: http://moritzlaw.osu.edu/electionlaw/comments/2005/comment0322.html. This suggestion relates directly to California's experience after shortening the deadline for registration to 15 days from 29, which contributed to the state's overwhelming reliance on provisional ballots. Had the election in California been close, the contention over provisional ballots could have been destabilizing.

5. States should issue a receipt with a tracking number to each person submitting a registration form. The tracking number will allow the voter to check on registration status through the use of that numbe. r and a publicly available registration list. The receipt could serve as an "admission ticket" to a regular ballot, even if the voter's name was not on the poll worker's list. [2]
6. States should have clear rules with respect to whether registration forms collected by third parties are processed as mail-in or in-person registrations.

7. Registration forms submitted by third-party groups should be considered mail-in registrations subject to those ID requirements. But if giving a registration form to a third-party group is considered equivalent to giving the form to a Board of Elections, or DMV, official then the law should say so explictly.

8. The re-enfranchisement process should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic or no more burdensome than the process required for any new registrant.[3]

9. A provisional ballot should seek from the voter all the information necessary to constitute registration and be filed by local officials with the proper office to complete the registration process.

B. Pre-Election Information For Voters

The better voters understand their rights and obligations, the easier the system will be to manage and the more legitimate the appearance of the process.

1. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate the casting of a regular nallot.

2. This same information should be Included on sample ballots

3. Publish this information shortly before the election in prominent newspaper announcements and, if feasible, through broadcast media.

C. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot.

1. The organization of the polling place, particularly the multi-precinct polling place is important. Guidance should provide best practices on the Importance of greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and relation topics.

---

[2] There could be two different kinds of receipts: one would be simply confirm that an individual submitted a registration form by the required deadline; the other, more robust, would confirm that the voter was officially registered

[3] From The Century Foundation Report

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting.

3. Offer a best practice on estimating the number of provisional ballots that should be made available at each precinct, so that they don't run out on Election Day

4. Offer a best practice on the handling of provisional ballots between the time they are cast to when they are examined afterward

5. Offer best practices in training and scripting poll workers so that they ask the right questions, offer the right information, and make provisional ballots available appropriately – particularly important when a voter shows up at the wrong precinct.

D. Evaluating the Ballot

The clarity of criteria is critical to a sound evaluation process and to the legitimacy of the system as a whole.

1. The experience in 2004 in North Carolina, Washington, Ohio underline the importance of clarity in the criteria to be used in deciding if a provisional ballot should be counted. Rushed litigation over the evaluation of provisional ballitng could erode the legitimacy of a presidential election. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation." Nonetheless, the NY *Panio v. Sutherland* case shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

2. Recent legislation in Arizona indicates that this guidance should reiterate HAVA's requirement that persons appearing claiming to be registered voters cannot be denied a ballot because they do not have identification with them.

3. Voters who lack ID should have up to three days to provide either the HAVA-specified forms of ID or other documentation that will facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered by mail. This research has shown that voters seem to feel returning with ID is less onerous that signing an affidavit.

4. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct. The best practice may be to define "jurisdiction" more broadly than the precinct. Or, more modestly, If a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count as long as the voter appears at the correct polling site. [4]

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[4] Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

5. The best practice for election officials to evaluate a provisional ballot includes a check of existing records, including the original registration form, in order to match signatures.

6. Public confidence in the process of evaluating and counting provisional ballots requires that the process be open to the public and conducted by a team of election officials whose decision will be reviewed by a Board of Elections (or similar body) if the decisions was not unanimous.

7. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed.

8. The standards used for eligibility of provisional voters should be made clear in state law that specifies the "burden of proof" to be met. For example, a provisional ballot will not be rejected unless officials find *by clear and convincing evidence* that voter is ineligible; or provisional ballot will not be counted unless all available evidence shows that voter *more likely than not* is eligible

9. Clear standards are needed for the essential information that must be appear on provisional ballot envelope: name, address, signature, etc. The standards should indicate that a provisional ballot does not count if it lacks this information. The standards should provide voters a reasonable opportunity provide the missing information. (For example, election officials have no duty to inform the voter of the error, but if voters appear at the Board of Elections within 72 hours on their own initiative they can supply the missing info.)

10. Sates that use the information on the provisional ballot to permit voters whohave changed their addresses to update their registrations, should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

11. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. The guidance document should specify a range of time periods as a best practice (for example: 7 days, 10 days, 14 days, 21 days).

F. Post-election Information for Voters

Timely information for voters provides a final quality control on the system by giving the voter an opportunity to correct mistakes that may cause a legitimate ballot not to be counted.

1. Recommend best practices to improve the use of websites, phone lines, or mail to inform provisional voters about the evaluation of their ballots. The date by which this occurs is critical if voters are to have a reasonable opportunity to correct errors.

2. Specify the administrative review procedures, if any, that are available to a voter who has been told that her provisional ballot was rejected. May she appeal to a higher administrative authority? if so, under what timetable? What evidence may she offer in an effort to demonstrate eligibility?

G. State Laws Governing Litigation Over Provisional Voting

1. State law could foreclose litigation where the purpose is to change the outcome of the election, but a better option appears below.
2. Provide for expedited, streamlined litigation – administrative decisions regarding the eligibility of provisional ballots can be overturned only if *clearly erroneous* based on documentary evidence or a violation of the clearly specified procedures concerning the processing of such ballots
3. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

BROADER CONSIDERATIONS

H. Integrity and the Appearance Of Integrity

1. Non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system?
2. Transparency – require the purging process for registration to be public and with an opportunity to for voters to correct an erroneous determination that they should be purged.
3. Transparency – require the evaluation process for provisional ballots to be public.
4. Training poll workers – provide guidance on how to provide information to potential voters on their options if their names do not appear not on the registration list.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance (Quality Improvement Model)

Defining what constitutes a successful provisional voting systemis difficult. The most successful system is probably not the one with the most provisional votes cast (which may indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted (the evaluation process is likely to be flawed).

Defining quality here requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes.

The first step to improving quality is to recognize the provisional voting process as a system and the consequent need to take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.[5]

But a clear first step is to recommend to the states the metrics they can establish, collect and monitor to evaluate the quality of the provisional voting process and other aspects of the system. Among them might be:

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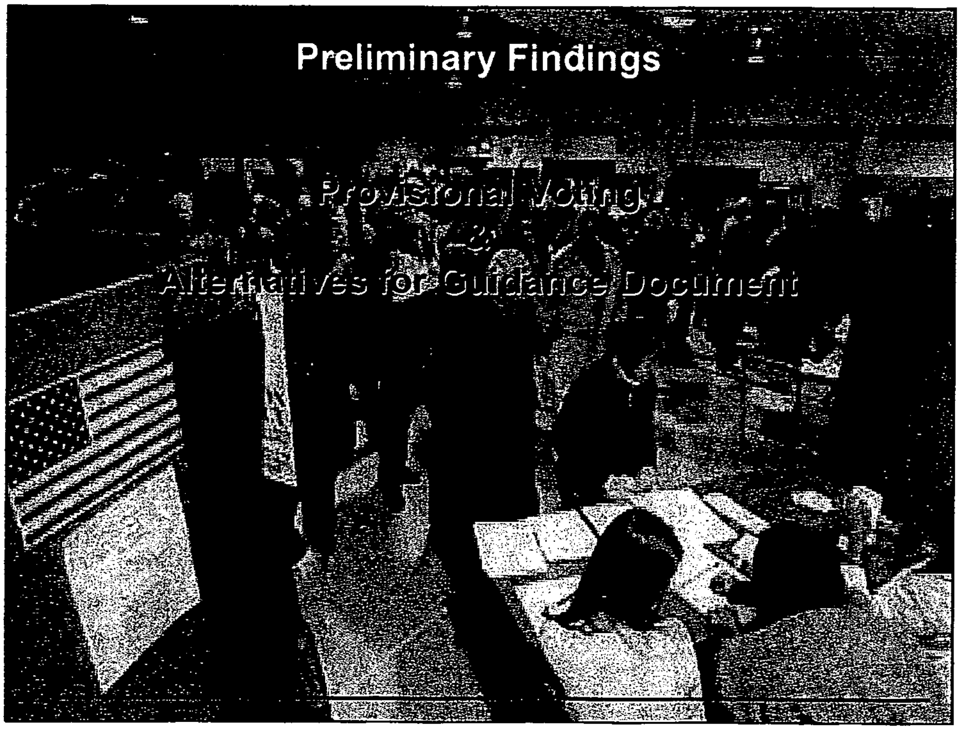
[5] Perhaps the EAC should engage one of the national quality organizations to evaluate the provisional ballot process within the broader context of the electoral system.

DRAFT

1. Standard deviation of % of provisional ballots counted by county to estimate the consistency of the evaluation system within the state.
2. Set targets to reduce the number of provisional ballots cast as a measure of the quality of the registration system.
3. Election complaints by jurisdiction, from precinct to the state level.

Briefing for

September 6 , 2005



Preliminary Findings

Provisional Voting

&

Alternatives for Guidance Document

QUESTIONS –TOPICS OF SPECIAL INTEREST

1. How did states prepare for HAVA's provisional voting requirements?
2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?
3. How did litigation affect the implementation of Provisional Voting?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did State and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

---

1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- Only about 1 in 10 made available to poll workers a voter registration database.
- Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in preparation to give voters a way to find out if their provisional ballots had been counted:

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

18 states were new to provisional voting; 25 others had experience.

Local election officials in the "old" states felt more confident.

9 out of 10 local officials in the "old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "new" states.

<u>"New" state officials felt:</u>

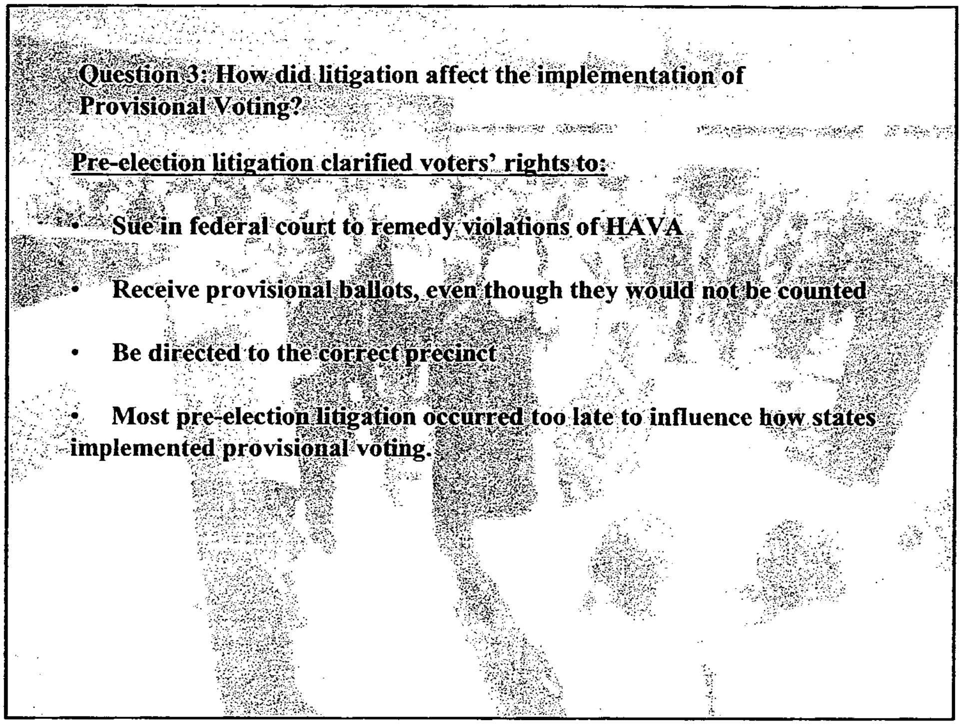
- Voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted.
- More funding was needed to educate voters about their rights to cast a provisional ballot.

---

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

<u>Difference in performance even more marked:</u>

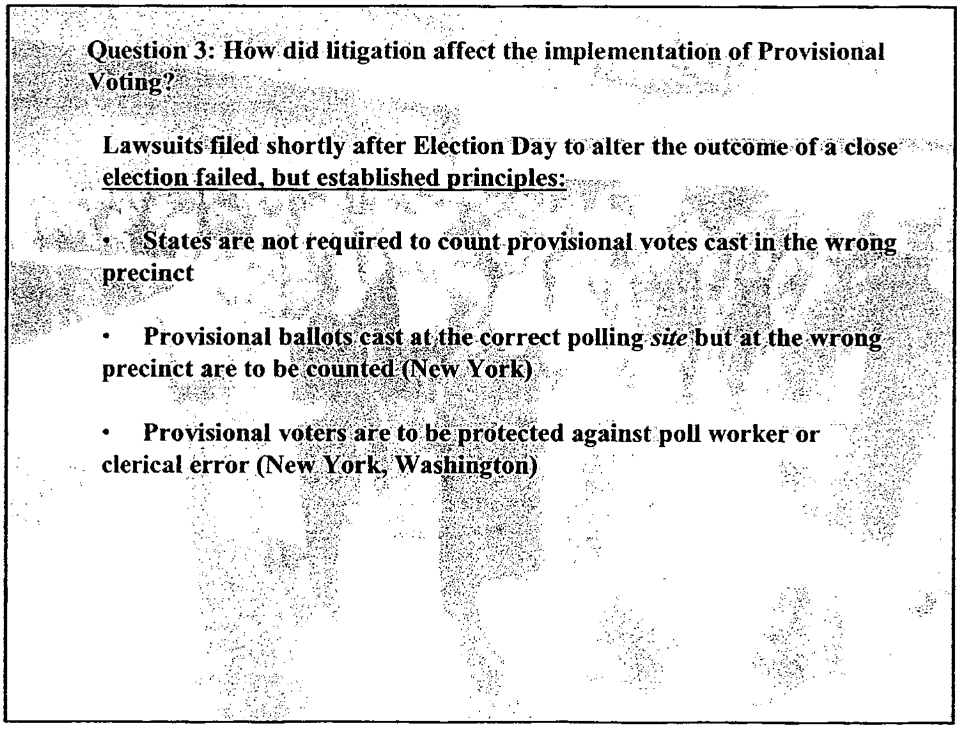
- Provisional ballots in "old states" = more than 2% of the total vote, 4 times the proportion in "new" states.
- Counting provisional ballots in the final vote, the "old" states averaged nearly double the number of the "new" states.
- In "old" states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the "new" states.



Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

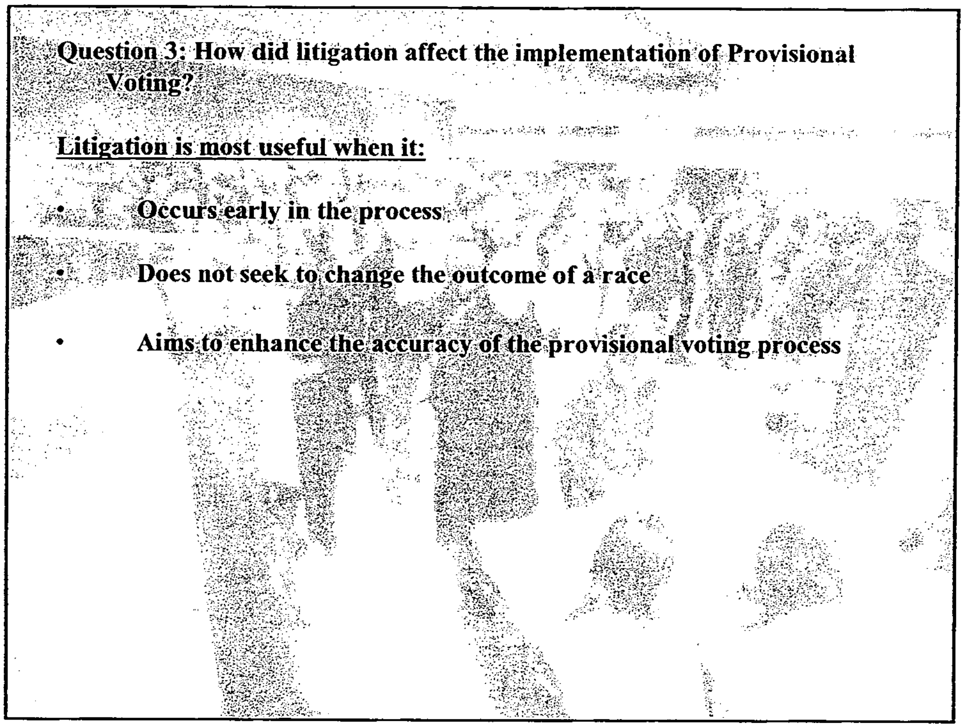
- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**



Question 3: How did litigation affect the implementation of Provisional Voting?

Lawsuits filed shortly after Election Day to alter the outcome of a close election failed, but established principles:

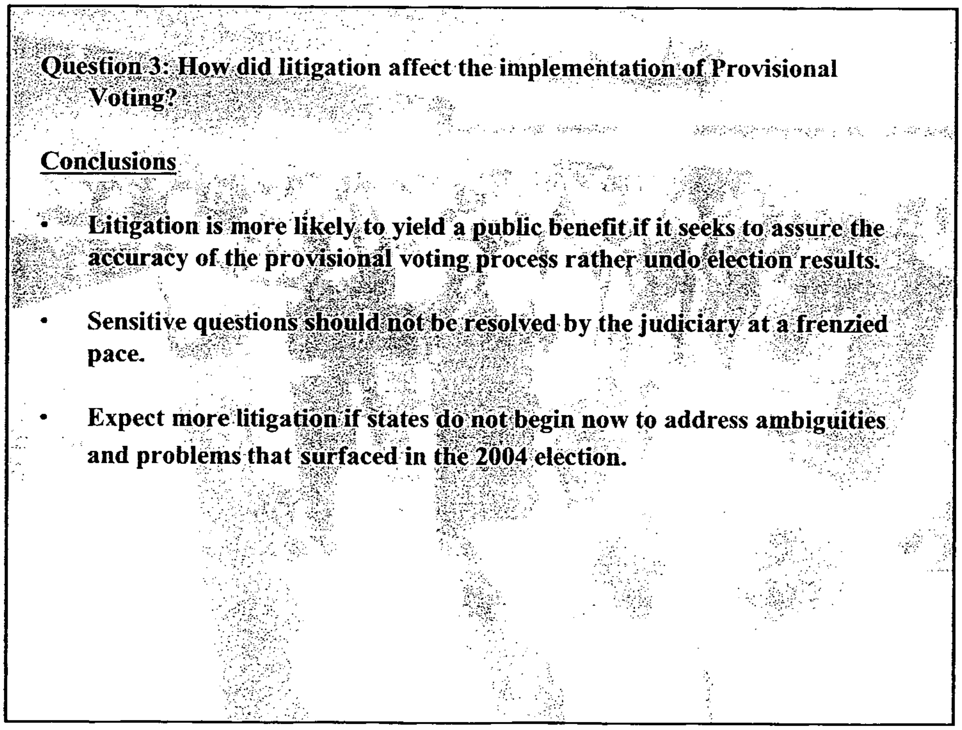
- **States are not required to count provisional votes cast in the wrong precinct**
- **Provisional ballots cast at the correct polling *site* but at the wrong precinct are to be counted (New York)**
- **Provisional voters are to be protected against poll worker or clerical error (New York, Washington)**



Question 3: How did litigation affect the implementation of Provisional Voting?

Litigation is most useful when it:

- **Occurs early in the process**
- **Does not seek to change the outcome of a race**
- **Aims to enhance the accuracy of the provisional voting process**



Question 3: How did litigation affect the implementation of Provisional Voting?

Conclusions

- **Litigation is more likely to yield a public benefit if it seeks to assure the accuracy of the provisional voting process rather undo election results.**
- **Sensitive questions should not be resolved by the judiciary at a frenzied pace.**
- **Expect more litigation if states do not begin now to address ambiguities and problems that surfaced in the 2004 election.**

Question 3: How did litigation affect the implementation of Provisional Voting?

Policy Implications

Guidance to the states on how to encourage earlier litigation

"Preferred practice" for states to preclude post-election challenges that could have been filed in a pre-election lawsuit.

States can distinguish between the two kinds of suits by providing a streamlined administrative remedial process for voters who believe their provisional ballot rights were mistreated and a more burdensome judicial proceeding to contest an election result.

Focus litigation on the ways state laws are allegedly deficient to:

Clarify the rules applicable to provisional voting

Assure that the rights protected by provisional voting laws are enforced

4. How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout. These voters otherwise would have been turned away at the polls.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

Whatever the precise figure, there is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the "new" states.

Experience factor: mechanical or cultural?

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.006%.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the Voter ID requirements the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In-precinct versus out-of-precinct states had different outcomes.

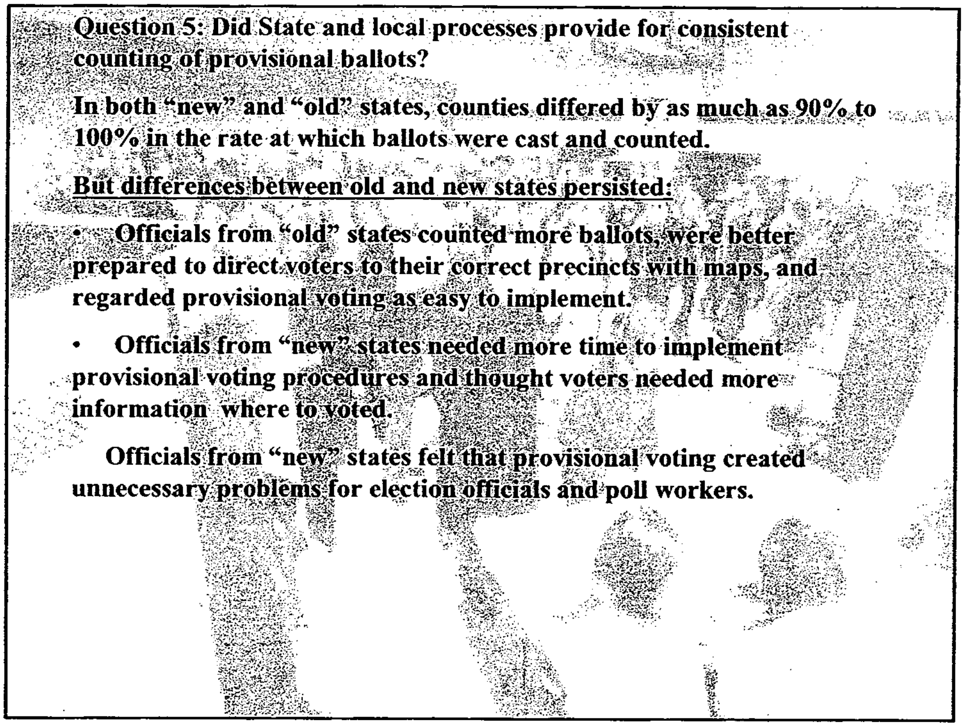
States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

In "old" states, this difference was greater.

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.

If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.



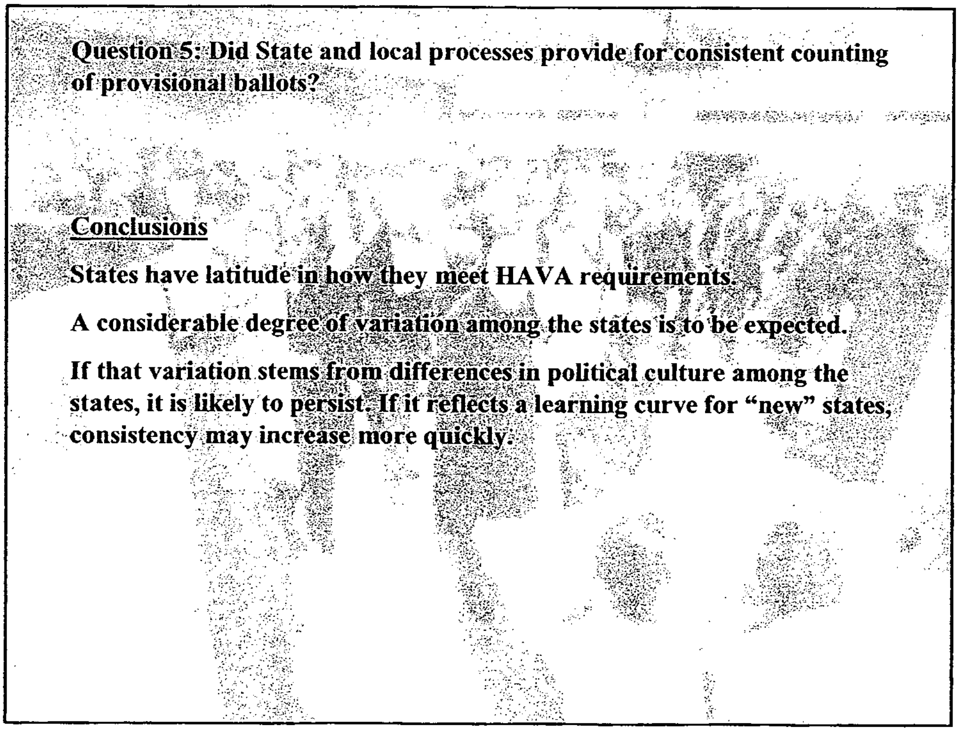
Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In both "new" and "old" states, counties differed by as much as 90% to 100% in the rate at which ballots were cast and counted.

<u>But differences between old and new states persisted:</u>

- Officials from "old" states counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement.
- Officials from "new" states needed more time to implement provisional voting procedures and thought voters needed more information where to voted.

Officials from "new" states felt that provisional voting created unnecessary problems for election officials and poll workers.



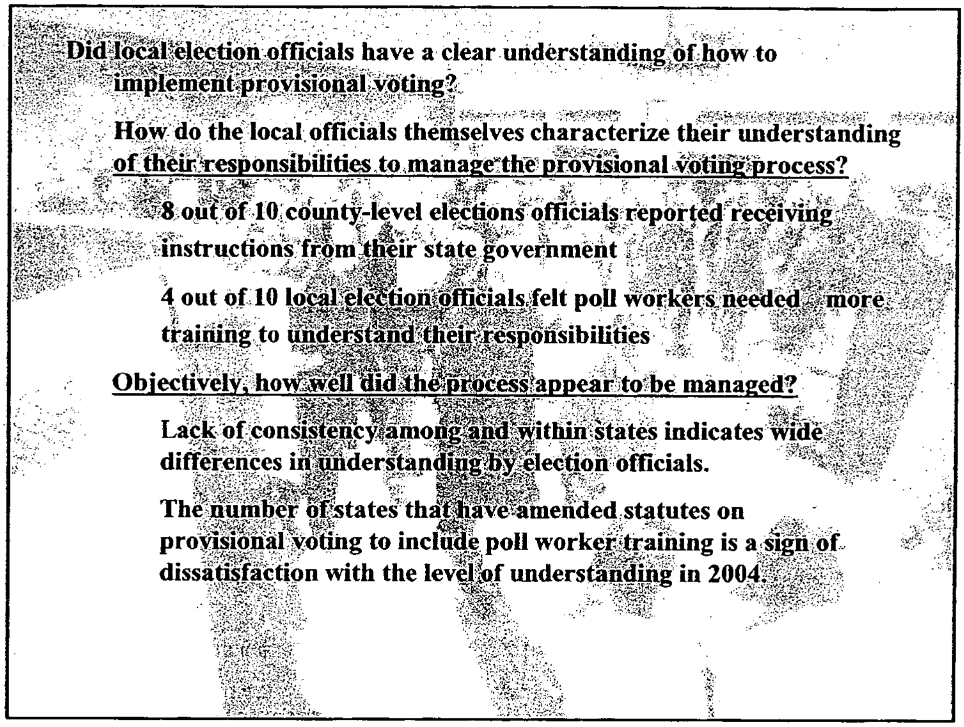
Question 5: Did State and local processes provide for consistent counting of provisional ballots?

<u>Conclusions</u>

States have latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.



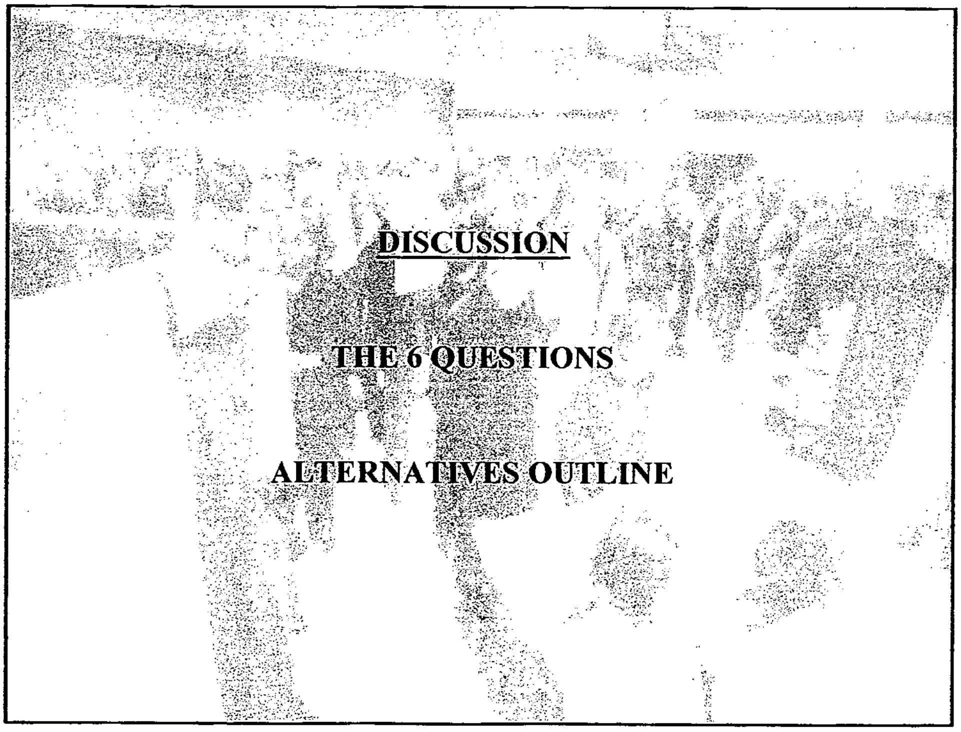
Did local election officials have a clear understanding of how to implement provisional voting?

How do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process?

- 8 out of 10 county-level elections officials reported receiving instructions from their state government
- 4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

Objectively, how well did the process appear to be managed?

- Lack of consistency among and within states indicates wide differences in understanding by election officials.
- The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.



DISCUSSION

THE 6 QUESTIONS

ALTERNATIVES OUTLINE

Briefing for

September 26, 2005

Briefing for

U. S. Election Assistance Commission

September 6, 2005

QUESTIONS –TOPICS OF SPECIAL INTEREST

1. How did states prepare for HAVA's provisional voting requirements?
2. How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?
3. How did litigation affect the implementation of Provisional Voting?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did State and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

1. How did states prepare for HAVA's provisional voting requirements?

Interviews told us how election officials prepared to administer the process.

Most received provisional voting instructions from state government.

The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- Only about 1 in 10 made available to poll workers a voter registration database.
- Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in preparation to give voters a way to find out if their provisional ballots had been counted.

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

18 states were new to provisional voting; 25 others had experience.

Local election officials in the "old" states felt more confident.

9 out of 10 local officials in the "old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "new" states.

"New" state officials felt:

- **Voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted.**
- **More funding was needed to educate voters about their rights to cast a provisional ballot.**

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

Difference in performance even more marked:

- **Provisional ballots in "old states" = more than 2% of the total vote, 4 times the proportion in "new" states.**
- **Counting provisional ballots in the final vote, the "old" states averaged nearly double the number of the "new" states.**
- **In "old" states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the "new" states.**

Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

Question 3: How did litigation affect the implementation of Provisional Voting?

Lawsuits filed shortly after Election Day to alter the outcome of a close election failed, but established principles:

- **States are not required to count provisional votes cast in the wrong precinct**
- **Provisional ballots cast at the correct polling *site* but at the wrong precinct are to be counted (New York)**
- **Provisional voters are to be protected against poll worker or clerical error (New York, Washington)**

Question 3: How did litigation affect the implementation of Provisional Voting?

Litigation is most useful when it:

- **Occurs early in the process**
- **Does not seek to change the outcome of a race**
- **Aims to enhance the accuracy of the provisional voting process**

Question 3: How did litigation affect the implementation of Provisional Voting?

Conclusions

- Litigation is more likely to yield a public benefit if it seeks to assure the accuracy of the provisional voting process, rather undo election results.
- Sensitive questions should not be resolved by the judiciary at a frenzied pace.
- Expect more litigation if states do not begin now to address ambiguities and problems that surfaced in the 2004 election.

Question 3: How did litigation affect the implementation of Provisional Voting?

Policy Implications

Guidance to the states on how to encourage earlier, rather than later, litigation

"Preferred practice" for states to preclude post-election challenges that could have been filed in a pre-election lawsuit.

States can distinguish between the two kinds of suits by providing a streamlined administrative remedial process for voters who believe their provisional ballot rights were mistreated and a more burdensome judicial proceeding to contest an election result.

Focus litigation on the ways state laws are allegedly deficient to:

- **Clarify the rules applicable to provisional voting**
- **Assure that the rights protected by provisional voting laws are enforced**

How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1,2 million voters, or 1.01% of turnout. These voters otherwise would have been turned away at the polls.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

Whatever the precise figure, there is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the “new" states.

Experience factor: mechanical or cultural?

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country.

A few states accounted for most of the ballots cast.

- The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.
- Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the Voter ID requirements and registration status, the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast.

Those without databases counted more than double that rate (44%).

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In-precinct versus out-of-precinct states had different outcomes.

States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

In "old" states, this difference was greater.

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.

If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In both "new" and "old" states, counties differed by as much as 90% to 100% in the rate at which ballots were cast and counted.

But differences between old and new states persisted:

- **Officials from "old" states counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.**
- **Officials from "new" states needed more information for voters about the jurisdiction where provisional ballots must be cast in order to be counted and needed more time to implement provisional voting procedures.**

- **Officials from "new" states felt that provisional voting created unnecessary problems for election officials and poll workers.**

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Conclusions

States have considerable latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.

Did local election officials have a clear understanding of how to implement provisional voting?

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8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 felt poll workers needed more training to understand their responsibilities.

<u>Second, objectively how well did the process appear to be managed?</u>

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

DISCUSSION

THE 6 QUESTIONS

ALTERNATIVES OUTLINE

Nicole Mortellito/CONTRACTOR/EAC/GOV

09/02/2005 05:08 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Paul
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC
bcc
Subject September 6 - Commissioners Discussion

Commissioners -

There are eleven discussion topics:

1. **Arizona Matter** - Gavin
2. **Lever Machine Advisory** - Gavin
3. **NIST/TGDC** - Tom Wilkey
   - Agenda comments
   - '07 Budget Request
4. **Sole Source Contracts** - Karen Lynn-Dyson
   - Council for Excellence in Government
   - National Academy of Sciences VR Database Technical Support
   - Design for Democracy
5. **Eagleton Update** - Karen and Tom Wilkey
   - Definition of Balance
6. **September Meeting Agenda** - Julie Thompson
7. **GAO Comments** - Tom, Brian Hancock & Julie
8. **Election Day Survey Rollout** -- Jeannie Layson
   - Consensus vote for consideration: Modification to EDS contract/distribution of state data
9. **Carter-Baker Commission** - Chair Hillman (discussion)
10. **EAC 06 appropriation** - Chair Hillman (discussion)
11. **Assistance to States of Counties Affected by Hurricane Katrina** - Tom (discussion)

Supporting documentation for some topics has been left in your offices or with your special assistants for your perusal.

Regards,

Nicole K. Mortellito
Assistant to the Executive Director - Thomas R. Wilkey
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.3114 phone
202.566.3127 fax

Sheila A. Banks/EAC/GOV
08/22/2005 08:17 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Eagleton Contract

Karen,

I need a copy or the EAC contract with Eagleton and Eagleton's latest progress/activity report for the Chair. I'm meeting her at BWI at 2:30 p.m. today.

Thanks,
Sheila

"Tom O'neill"
[redacted]
09/02/2005 04:48 PM

To tokaji.1@osu.edu, ireed@rutgers.edu, john.weingart@rutgers.edu, foley.33@osu.edu, rmandel@rci.rutgers.edu, rmandel@rci.rutgers.edu
cc klynndyson@eac.gov
bcc
Subject New Peer Review Group Member

History: This message has been forwarded.

Tim O'Rourke, Dean of the Fulton School of Liberal Arts at Salisbury University in Maryland, has agreed to serve on the Peer Review Committee.

Tom O'Neill

"Tom O'neill"
[redacted]
09/01/2005 04:13 PM

To klynndyson@eac.gov
cc
bcc
Subject O'Rourke Bio

Karen:

I received the fax and will pass it around the team. Thanks,

Tom O'Neill

"Tom O'neill"
[redacted]
09/01/2005 03:34 PM

To klynndyson@eac.gov
cc
bcc
Subject Peer Review Group member

Karen,

I haven't received the fax about the potential new recruit for the Peer Review Group that you mentioned to me yesterday.

We have now completed the materials to be distributed to those attending the meeting at the EAC on September 6. You will receive a hard copy of all the material by express delivery tomorrow. The most important material to get to those attending in advance is the document with the answers to the 6 questions about topics of special interest on provisional voting outlined in our contract. The bulk of the material is backup to this summary report.

Tom O'Neill

Paul DeGregorio/EAC/GOV
08/30/2005 02:31 PM

To Karen Lynn-Dyson/EAC/GOV
cc Thomas R. Wilkey/EAC/GOV
bcc
Subject Eagleton Peer Review Group

Karen,

I have reviewed the Eagleton Peer Review Group recruitment list that you recently provided. Based on what I or Amie can determine from the bio's provided or an Internet search, it appears that at least 4 of the 7 people who have said yes to be on the group seem to have a liberal perspective, or have had a history of working on that side of the political spectrum. I could only identify one as being a Republican, and a moderate one at that (Verniero). Mike Alvarez has conducted a lot of research into election issues and generally seems to do it in a neutral way. I have been unable to obtain a bio or background information on Tim Storey, who is not an academic. The only person that I could identify on their list as being conservative was Brad Clark, who has declined to participate.

Therefore, based on this information regarding the Peer Review Group, I am not satisfied that they will provide Eagleton with the balanced review that I thought they would receive from such a group. I would urge you to ask them to seek the input of more conservative academics so that whatever study we receive from them will have the benefit of a balanced review. I am going to have Amie provide you with the background sheet on Professor Tim O'Rourke of Salisbury University in Maryland, whom they may want to consider for this panel. We have some calls into others who could suggest some conservative academics for this review panel.

Thanks.

Paul DeGregorio
Vice Chairman
US Election Assistance Commission
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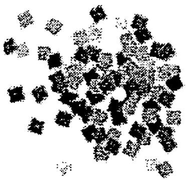
202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov



Amie J. Sherrill/EAC/GOV
08/19/2005 03:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Peer Review Group

History: This message has been replied to.

I only got the original email on the September 6th meeting. Was this meeting confirmed by the commissioners?

Amie J. Sherrill
Special Assistant to Vice Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
08/19/2005 03:41 PM

To "Tom O'neill" [redacted]
cc
Subject Re: Peer Review Group

Tom-

Thank you for sharing this list of your Peer Review Group members, to-date. I will share this list with the Commissioners and will be certain to let your know of their feedback, if any.

I will also be back in touch regarding Eagleton's research around voter fraud and the research project EAC will be undertaking,this fall, around voting fraud and voter intimidation. The EAC is presently in the process of finalizing a work and staff plan for this project and once it is completed, I will be certain to brief you on it.

In the meantime, EAC staff and several of the Commissioners looks forward to meeting with the Eagleton/Moritz team on September 6 at 1:30 PM.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

"Tom O'neill" [redacted]
08/19/2005 02:20 PM

To klynndyson@eac.gov
cc

Subject Peer Review Group

Karen,

Attached is a report on the status of recruitment of members of the Peer Review Group. We extended 9 invitations. We have four confirmed members, one reluctant turn-down, one who has yet to respond to an initial inquiry, and are awaiting confirmation from 3 others who initially agreed. Please let me know if you need additional information.

Tom O'Neill

RecruitmentStatus.doc

"Tom O'neill"
[redacted]
08/19/2005 02:20 PM

To klynndyson@eac.gov
cc
bcc
Subject Peer Review Group

History: This message has been replied to and forwarded.

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Tom O'Neill

RecruitmentStatus.doc

STATUS OF PEER REVIEW GROUP RECRUITMENT

(As of August 17, 2005)

R. Michael Alvarez, Ph.D. Professor of Political Science California Institute of Technology	**YES/CONFIRMED**
Guy-Uriel Charles Associate Professor, School of Law University of Minnesota 612-626-9154	**YES***
Brad Clark Professor of Law George Washington University School of Law	**NO**
Pamela Susan Karlan Montgomery Professor of Public Interest Law Stanford Law School 650-725-4851	**YES**
Martha E. Kropf, Ph.D. Assistant Professor of Political Science University of Missouri-Kansas City 816-235-5948; KropfM@umkc.edu	**YES/CONFIRMED**
Daniel H. Lowenstein Professor of Law UCLA 310-825-4841	**YES**
John F. Manning Professor Harvard Law School	**NO RESPONSE**
Tim Storey Program Principal Legislative Management Program National Conference of State Legislatures	**YES/CONFIRMED**
Peter G. Verniero, Esq. Counsel Sills, Cummis, Epstein and Gross, PC (Former NJ Attorney General and Supreme Court Justice)	**YES/CONFIRMED**

Gracia Hillman/EAC/GOV
08/19/2005 12:06 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc "Paul DeGregorio" <pdegregorio@eac.gov>, "Ray Martinez" <rmartinez@eac.gov>, "Karen Lynn-Dyson" <klynn-dyson@eac.gov>, Juliet E.
bcc
Subject Fw: Eagleton

Tom: Please put this on the agenda for discussion when we get together on Friday in Denver.

Sent from my BlackBerry Wireless Handheld
Paul DeGregorio

From: Paul DeGregorio
Sent: 08/19/2005 11:06 AM
To: Gracia Hillman; Raymundo Martinez; Donetta Davidson; twilkey@nycap.rr.com; Juliet Thompson; Karen Lynn-Dyson; Carol Paquette
Subject: Eagleton

In his note regarding the Eagleton contract, Hans has raised some of the same concerns I raised from the beginning of any discussions I had regarding this contract with our staff, and at our first formal meeting with Eagleton. In reviewing their work product from time to time, I continue to have concerns about a lack of balanced input and have repeatedly voiced them with staff and with Eagleton. I did this when the initial peer review group was proposed and again during their presentation at our meeting in Pasadena (the outreach slide in their public presentation showed outreach to seven groups, of which only one could be considered conservative-leaning). Now, as I have just had the opportunity to read their July progress report, it appears that Eagleton seems to be going into a larger analysis of the voter fraud issue than was authorized in the contract. My suspicion is that Dan Tokaji is injecting his views into this to dismiss or diminish the concerns some people may have about voter fraud. I could be wrong, but his previous writings lead me to believe otherwise.

I only found one mention of voter fraud in the contract with Eagleton. It is in Section 3.5 regarding provisional voting, where it discusses "minimizing opportunity for voter fraud." Yet, on page 4 of the July progress report from Eagleton, in describing their work plan for the next month it states: "we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms." This clearly seems to be going beyond the mandate we gave them as I thought they were going to be looking at voter fraud relating to provisional voting (as the contract calls for), not voter fraud as it relates to election reforms. While voter fraud was never mentioned in the contract regarding the voter ID issue, page 5 of their July report indicates that their narratives "will include an appraisal of the prevalence and nature of vote fraud." In addition to this, page 6 describes a look into the "relationship between voter ID regime and vote fraud."

Voter fraud is clearly an issue that is perceived differently from the Right and from the Left. I have struggled with determining what a clear definition of voter fraud is myself, and therefore want to obtain various perspectives and good analysis on this issue before I formulate a solid conclusion in my mind. It has been my understanding all along that the whole voter fraud/voter intimidation issue is going to studied by the EAC using a balanced group of consultants--not Eagleton and Moritz, who are likely to focus on just on the number of prosecutions of voter fraud, rather than the complaints made or the fact that many election officials are frustrated that some prosecutors don't take their complaints about voter fraud seriously. I am not convinced at this point that we will get a balanced and objective study from Eagleton/Moritz on voter fraud. I am puzzled on why they seem to be expending a significant portion of their time on this and would want to know if we somehow authorized them to do more research into the voter fraud issue.

On page 7 of their July report Eagleton indicates that communications with the EAC on the Peer Review

Group "were not clear or timely." I would like to know what this refers to. Also, I may have missed it, but I do not recall seeing the final list of who is serving as the Peer Review group.

The August 15th copy of the July report that I received from Karen did not include the attachment of the financial report of expenses incurred. I would like to see that attachment.

Outside of our NIST work, this contract represents our largest single outside expenditure of our operational funds. Any single expenditure of $500,000+ needs to be closely monitored. I, for one, am not going to sign off on any report that appears to have been written from a biased viewpoint, especially one that doesn't appear to be interested in hearing from conservative organizations or right-leaning researchers, or seems to minimize any input from them. I've already had questions from congressional staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against Republicans. I assured the critics that we have insisted all along on an objective study from Eagleton. An unbalanced or biased study from them will not only hurt my credibility, but also that of the EAC. I'm not suggesting that we stop their work, but I do want Tom and Julie to inform them in no uncertain terms that we will not accept a report that does not seriously consider all viewpoints on provisional voting and the voter ID issue, and that any study or interpretations they present to us reflect a diversity of opinions on these subjects. We also need for staff to determine whether their considerable work into the voter fraud area is authorized in the contract. We should not be paying for and receiving work we did not authorize.

The contract clearly calls for "alternative approaches" on voter ID requirements and "alternatives" on provisional voting. I agreed to support this contract to Eagleton because I was assured that we would receive a variety of approaches from their work, and not just those from a liberal perspective.

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pdegregorio@eac.gov
www.eac.gov

Paul DeGregorio/EAC/GOV
08/19/2005 11:06 AM

To Gracia Hillman/EAC/GOV, Raymundo Martinez/EAC/GOV, ddavidson@eac.gov, twilkey@nycap.rr.com, Juliet E. Thompson/EAC/GOV, Karen Lynn-Dyson/EAC/GOV, Carol
cc
bcc
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Paul DeGregorio
Vice Chairman
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pdegregorio@eac.gov
www.eac.gov

Amie J. Sherrill/EAC/GOV
08/17/2005 08:54 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Fw: Document

Can you forward this to me? Thank you.

Amie J. Sherrill
Special Assistant to Vice Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106
----- Forwarded by Amie J. Sherrill/EAC/GOV on 08/17/2005 08:54 AM -----

Paul DeGregorio/EAC/GOV
08/17/2005 04:54 AM

To Amie J. Sherrill/EAC/GOV
cc
Subject Document

Can you obtain for me from Karen the Ragleton scope of work? Thanks.

Sent from my BlackBerry Wireless Handheld

Juliet E. Thompson/EAC/GOV
07/19/2005 10:01 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Two items

History: This message has been forwarded.

1. Eagleton prepared a draft of the agenda. The information will provide insight into how HAVA ID provisions collide with other state ID provisions and other HAVA requirements. In addition, we will have some perspectives on if HAVA's voter ID provision went far enough.

2. Two food tables. Three seating tables and 30 chairs. We have picnic tables and lawn chairs in addition. Deliver to my house on Saturday, if possible -- 7024 Swain Drive, Alexandria, VA 22306 -- closest cross street is Spring Street and Route 1.

Juliet E. Thompson
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
07/19/2005 09:56 AM

To Juliet E. Thompson/EAC/GOV@EAC
cc
Subject Two items

Hi-

Two items, one professional, one social:

1. By contract, Eagleton is to arrange a public meeting to receive public comment on the draft guidance for provisional voting they have helped draft for the EAC. Could you let me know what work they have performed for the EAC in preparation for next week's public meeting on provisional voting? Could you also let me know how, if at all, you envision the presentations from next week's meeting informing Eagleton's work and EAC's preparation of guidance on provisional voting?

Thanks

2. Tomorrow I'm going to go to Brooke Rental in Vienna to order the table and chairs for the EAC picnic. How many tables and chairs to you want me to order? Also, let me know the precise date, time and location to where I should have the items delivered. Can you think of anything else you'd like me to order from them? (e.g. tablecloths, large containers to hold cold beverages, disco dancing balls, tacky champagne fountains, etc.)

K

Karen Lynn-Dyson

"Tom O'neill" [redacted]
07/15/2005 04:23 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Invitation to Tom Wilkey

Karen: I think I and Dan Tokaji of Moritz will be the only members of the team attending the Pasadena hearing,

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, July 15, 2005 3:26 PM
[redacted]
Subject: Re: Invitation to Tom Wilkey

Tom-

Thanks for sharing this information with me and for keeping me apprised of the activities, interests and concerns of the team.

FYI-
I'm not certain who is on board to attend the meeting at Cal Tech; Ruth and the others may wish to find a time that Tom would be available to meet with folks then.

Regards-

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

07/15/2005 02:39 PM

To klynndyson@eac.gov

cc

SubjectInvitation to Tom Wilkey

Karen,

For your information, Ruth Mandel, Director of the Eagleton Institute of Politics, sent the letter below to Tom Wilkey this afternoon. It is an invitation for him to meet with the project team in August at Rutgers.

Have a good weekend.

Tom O'Neill

I'm writing on behalf of my colleagues at the Eagleton Institute of Politics to send congratulations on your appointment as Executive Director of the Election Assistance Commission and to extend a warm invitation for you to visit the Institute to meet our research team The Eagleton Institute and our partners at the Moritz College of Law are delighted to have been selected to provide research services to the EAC for developing guidance to the states on provisional voting and voter identification requirements.

The Eagleton and Moritz team conducting the research and analysis would appreciate an opportunity to discuss the project with you so that we can gain a full understanding of your perspective on this work and make our research as useful as possible for you, the EAC, the states, and eventually the voters.

I understand that you continue to travel between New York and Washington, which would make a visit to Eagleton simple to arrange. Since the Rutgers campus in New Brunswick is not far from the Metropark Amtrak station, we could easily pick you up at Metropark and return you at the end of the visit. Our Moritz partners would also attend.

The agenda for such a meeting could include a briefing on our progress, discussion of challenges to be met, and a conversation about your goals for this research. We believe that the earlier in the research process we can arrange to meet, the better for the project.

I hope you agree that a meeting in the near future would be useful, and that you like the idea of a visit to the research site. If so, we can search for convenient dates in the next few weeks, perhaps starting with the possibility that you would be available on August 12, 15, or 16.

We all look forward to continuing our work together on this worthwhile project.

Ruth B. Mandel

Director, The Eagleton Institute of Politics

Board of Governors Professor of Politics

"Tom O'neill"
[redacted]
07/15/2005 10:01 AM

To jthompson@eac.gov
cc klynndyson@eac.gov
bcc
Subject July 28 hearing

Julie:

Can you fill me in on the current status of your planning for the hearing in Pasadena. Have invitations gone out to panelists? Are there tasks you would like us to undertake in preparation for the meeting?

Thanks,

Tom O'Neill

"Lauren Vincelli"
<Vincelli@rutgers.edu>
07/14/2005 04:43 PM
Please respond to
Vincelli@rutgers.edu

To klynndyson@eac.gov
cc "'Tom O'neill'" [redacted]
john.weingart@rutgers.edu
bcc
Subject Eagleton Institute June 2005 Progress Report

History: This message has been forwarded.

Ms. Dyson,

Attached please find the June 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please direct them to Tom O'Neill at: [redacted].

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,
Lauren Vincelli

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551

ProgressReport_JUNE2005_EagletonInst.doc

"Tom O'neill"
[redacted]
07/11/2005 12:07 PM

To klynndyson@eac.gov
cc
bcc
Subject DRAFT Agenda for July 12 Teleconference

Karen

Attached is a draft agenda for tomorrow's teleconference. You should be receiving later today information from Lauren Vincelli at Rutgers on what number to call to participate in the conference.

Please let me know if there are topics you would like to add to the agenda.

Agenda712.doc

DRAFT AGENDA

EAC CONTRACT PROJECT TEAM
Eagleton Institute of Politics
July 12, 2005
9:30 – 11:30 A.M.

Teleconference with the EAC Commissioners and staff

1. Introductions
2. Summary of current status of the project – Tom O'Neill
3. Questions and comments by EAC
4. Status Reports
    a. Moritz research on statutes, cases, and administrative regulations --- Ned Foley
    b. Experience with provisional voting and voter ID in 2004 –John Harris
    c. Voter ID requirements and turnout – Dave Andersen
    d. Information system – Lauren Vincelli
    e. Intranet – Don Linkly
    f. July 28 meeting and panels – Tom O'Neill
    g. Selecting and recruiting the Peer Review Group – Tom O'Neill
5. Questions and comments by EAC
6. Date and time for next meeting: July 19, 2005 at 9:30 a.m.

"Lauren Vincelli"
<Vincelli@rutgers.edu>

07/11/2005 11:58 AM

Please respond to
Vincelli@rutgers.edu

To "Tom O'Neill" [redacted] foley.33@osu.edu, williams.285@osu.edu, lauracw@columbus.rr.com, tokaji.1@osu.edu, john.weingart@rutgers.edu,

cc klynndyson@eac.gov

bcc

Subject EAC Conference Call - Tues. 7/12 at 9:30 am

History: This message has been replied to.

Hello everyone,

To follow are the instructions for the upcoming conference call with Eagleton & Moritz team members and EAC commissioners. The instructions below apply to anyone calling in for this call. Anyone interested in tomorrow's discussion can use this access number for the call – please pass the information on to any of your colleagues that wish to participate or listen to the conference call.

From any phone, dial: (877) 805-0964
When prompted, enter: 869580 and #.

I will initiate the call here at Eagleton. If you happen to call in before we have called in, you will be placed on hold until we call in. If anyone has any questions, please email me or call me at the telephone number below.

Have a great day.

Best,
Lauren

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551

"Tom O'Neill"
[redacted]
07/10/2005 11:38 AM

To "Vincelli, Lauren" <Vincelli@rutgers.edu>
cc "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Weingart, John" <john.weingart@rutgers.edu>
bcc
Subject Conference Call Tuesday

Lauren:

Our team meeting on Tuesday will include EAC staff and commissioners, the Moritz group, and, of course, the Eagleton group. I think we should provide a call-in number for a true conference call for this session.

Please set the conference call up and let the EAC know via an email to Karen-Lynn Dyson.

Hope you had a pleasant weekend.

Tom

"Tom O'Neill"
[redacted]
07/07/2005 02:23 PM

To "Lynn-Dyson, Karren" <klynndyson@eac.gov>
cc "Vincelli, Lauren" <Vincelli@rutgers.edu>
bcc
Subject Progress and Status reports

History: This message has been replied to.

Karen,

Since I was puzzled by the distinction you drew in your last email about progress and status reports, I checked the contract. Please confirm my interpretation of Section 3.2.

I read it to require a "progress report," within 2 weeks of the end of each month. "Budget status shall also be provided," the section concludes.

That would mean, I believe, that we owe you a progress report by July 14, and it should include a status report on the budget.

Please let me know if I have misread this section or if you interpret it differently.

Tom

"Tom O'Neill"
[redacted]
07/07/2005 02:01 PM

To klynndyson@eac.gov
cc "Vincelli, Lauren" <Vincelli@rutgers.edu>
bcc
Subject Re: June status and progress reports

Karen:

I'm not sure what the difference is between a *status report* and a *progress report* , but our internal deadline for reports on each phase of the project is today, we'll be compiling them tomorrow, and sending the report on to you on Monday.

Tom

----- Original Message -----
From: klynndyson@eac.gov
To: [redacted]
Sent: Thursday, July 07, 2005 1:57 PM
Subject: June status and progress reports

Tom-

I have noted that Eagleton will provide a status report to the EAC on July 5th, 2005 and a progress report on July 11, 2005

I'm checking in to determine when the EAC should expect to receive these reports.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV
06/28/2005 08:55 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject RE: Peer Review Group

Thanks..I think this plan will work and this will allow us to set up a focus group of Election Officials and stakeholders who need to spend more time together anyway.
Tom
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
06/27/2005 05:45 PM

To "Tom O'Neill" [redacted]
cc
Subject RE: Peer Review Group

Tom-

Had a very good review and discussion of the PRG at this morning's Commissioner meeting.

Also, the Commissioners have marked their calendars for a conference call with the Eagleton/Moritz team on July 12 at 9:30 AM.

Several concerns were raised about the composition of the PRG and, after some discussion, I indicated that Eagleton will provide the EAC with a revised participant list, and with a more detailed description of the PRG's mission, goals, objectives, workplan and timelines for accomplishing its work.

The Vice Chair is concerned that there is not sufficient conservative representation on the PRG. I would suggest the team do more research to identify well-recognized conservative academics to put on the Group.

Further, the Commissioners recommend a tiered process in which the PRG will prepare a "dispassionate" analysis of the issues and draw some tentative conclusions. This analysis and these conclusions will then be vetted with a defined/select group of local election officials, and then, with a defined/select group of advocacy organizations.

It was also suggested that a final round of focus group meetings be held with a cross-section of these election officials, advocates and academics for an overall interactive reaction to the analysis and recommendations.

Hope this helps clarify concerns; I look forward to sharing your revisions to the PRG with them.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005

tel:202-566-3123

"Tom O'Neill" <tom_oneill@verizon.net>

"Tom O'Neill"
[redacted]
06/23/2005 02:43 PM

To klynndyson@eac.gov
cc
Subject RE: Peer Review Group

Thanks, Karen.

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, June 23, 2005 2:24 PM
[redacted]
Subject: Re: Peer Review Group

Tom-

I will be back to you early next week with EAC's feedback on this.

Our initial reaction is that the group needs to include some local and/or state-level election officials, who have first-hand experience with these issues.

We will get you additional names and reactions by mid-week next week.

Thanks
K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" <tom_oneill@verizon.net>

06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
Subject Peer Review Group

Karen,

As you probably recall, one of the features of our proposal was the creation of a Peer Review Group to look over our findings, conclusions and draft reports before we prepare final drafts for the EAC's review. The EAC asked that before recruiting members of the PRG twe submit names for EAC's review. The aim, course, is to assemble a panel that is experienced, informed, and balanced.

Attached is a list of potential PRG members drawn from academia, the law, and non-profit organizations with interests in this area. Please look it over.

We may conclude that the PRG should also include two or three former government officials now in academia or related fields. We have a conference call with our partners at Moritz planned for tomorrow or Friday to decide a) if former officials should be included in the PRG and b)if so, who they should be. I'll keep you informed of our thinking as it develops.

Tom

"Tom O'Neill"
[redacted]
06/27/2005 09:52 AM

To klynndyson@eac.gov
cc
bcc
Subject July 12 and Peer Review Group

History: This message has been forwarded.

Karen:

The Eagleton project team usually meets on Tuesdays from 9:30 – 11. At tomorrow's meeting I'll confirm with the group that we will meet on July 12, if that will fit your schedule. If that is a bad time for you, we have moved our meeting time before and can do so again if we can align participants' calendars. This week for the first time, Laura Williams --representing Moritz-- will join the session by telephone. For the meeting on the 12th I'll try to arrange for Ned Foley and Dan Tokaji to participate as well.

On the Peer Review Group
Your request to include the election officials on the group caused us to think anew about its purpose and composition. We agreed that election officials would add a useful dose of real world experience to the research. One of them could be Peter Veniero, who as AG (where he served before appointment to our Supreme Court) was New Jersey's chief election official. We would like Tom Wilkey to suggest a couple of former, senior election officials who could contribute to the PRG's work. While the PRG needs the experience of election administrators, we believe that perspective can be conveyed best by a senior, former official who is not appointed to represent a group of such officials –only to represent him or herself. We believe the group's advice would be most useful if came from people with the perspective provided by now being some distance from the daily fray.

This analysis emerged from a Friday conference call in which Ingrid Reed, Ned Foley, Laura Williams and I rethought the composition of the PRG. We concluded that the group should not, after all, include members from organizations that have taken advocacy positions on the issues we are researching. We agreed that the PRG should focus on methodologies and research findings rather than debate policy outcomes. PRG members should be free to represent themselves, rather than argue from an existing institutional position on policy. The PRG is not an advisory committee or a group of stakeholders to vet and take some ownership of policy recommendations. We'll consult the stakeholders separately, beginning with the list of groups in the proposal.

To replace those from advocacy organizations, we believe it would be preferable to add more members(from academia and the law, such as Pam Karlan, Guy-Uriel Charles, or Dan Lowenstein, whose CVs are summarized on the attachment. Finally, I will draft a mission statement for the PRG. Attached is a revised list of proposed PRG members, showing 2 slots to be filled by senior, former election officials.

Hope you have received the Gantt chart by now and that it fits your needs.

Ingrid Reed and I will attend the meeting in New York on Thursday and look forward to seeing you there.

Tom

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Friday, June 24, 2005 6:36 PM
> [redacted]
> **Cc:** twilkey@eac.gov
> **Subject:** RE: Peer Review Group

Tom-

I'd like to schedule a conference call among EAC and Eagleton staff for sometime the early part of the week of July 11. Please let me know dates and times on your end and I'll coordinate with staff here.

During the call we can review your monthly report and cover any problems, challenges, needs, etc. that the Eagleton team may have.

Thanks

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" [redacted]

06/23/2005 02:43 PM

To klynndyson@eac.gov
cc
Subject RE: Peer Review Group

Thanks, Karen.

Tom
-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, June 23, 2005 2:24 PM
[redacted]
Subject: Re: Peer Review Group

We may conclude that the PRG should also include two or three former government officials now in academia or related fields. We have a conference call with our partners at Moritz planned for tomorrow or Friday to decide a) if former officials should be included in the PRG and b)if so, who they should be. I'll keep you informed of our thinking as it develops.

Tom

PROPOSED MEMBERS OF PRGREV.doc

"Tom O'Neill" [redacted]
06/23/2005 02:43 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Peer Review Group

History: This message has been replied to.

Thanks, Karen.

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, June 23, 2005 2:24 PM
[redacted]
Subject: Re: Peer Review Group

Tom-

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Our initial reaction is that the group needs to include some local and/or state-level election officials, who have first-hand experience with these issues.

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Thanks
K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" [redacted]

06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
Subject Peer Review Group

Karen,

As you probably recall, one of the features of our proposal was the creation of a Peer Review Group to look over our findings, conclusions and draft reports before we prepare final drafts for the EAC's review. The EAC asked that before recruiting members of the PRG twe submit names for EAC's review. The aim, course, is to assemble a panel that is experienced, informed, and balanced.

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Tom

"Tom O'Neill"
[redacted]
06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
bcc
Subject Peer Review Group

History: This message has been replied to and forwarded.

Karen,

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Tom

PROPOSED MEMBERS OF PEER REVIEW GROUP.doc

PROPOSED MEMBERS OF PEER REVIEW GROUP

R. Michael Alvarez, Ph.D.
Professor of Political Science
California Institute of Technology
rma@hss.caltech.edu
626-395-4422
Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College; his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

Deborah Goldberg, Ph.D
Program Director, Democracy Program
Brennan Center for Justice at NYU School of Law
161 Avenue Of The Americas, 12th Floor
New York, NY 10013
212-998-6730
Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.

Martha E. Kropf, Ph.D.
Assistant Professor of Political Science
University of Missouri-Kansas City
816-235-5948; KropfM@umkc.edu
Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

Wade Henderson, Esq.
Executive Director
Leadership Conference on Civil Rights
1629 K Street, NW, 10th Floor
Washington, DC 20006
Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU.

Kay Maxwell
President
League of Women Voters of the U.S.
1730 M Street NW, Suite 1000

Washington, DC 20036-4508
202-429-1965
Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project.

Tim Storey
Program Principal
Legislative Management Program
National Conference of State Legislatures
7700 East First Place
Denver, CO 80230
303-364-7700
or
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
202-624-5400

Peter G. Veniero, Esq.
Counsel
Sills, Cummis, Epstein and Gross, PC
One Riverfront Plaza
Newark, New Jersey 07102
Tel: 973- 643-7000
Verniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

"Tom O'Neill"
[redacted]
06/15/2005 06:36 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Election Day Study & Survey of Local Officials

Karen:

Yes, thanks. I did receive it.

The Peer Review Group and update on the panels for the July hearing will be there by week's end, as will, with any luck, the Gantt chart.

The design of the survey of local (i.e., county) election officials is proceeding rapidly. We will send a letter to the officals chosen in the random sample process before they receive a call from the company that actually conducts the interviews. Attached is a very preliminary draft of the letter, and I'd appreciate your comments. I took much of the language that describes the research from the approved language in the recent news release.

Tom

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Wednesday, June 15, 2005 6:01 PM
> [redacted]
> **Subject:** RE: Election Day Study & Survey of Local Officials
>
> Tom-
>
> I assume you got the needed provisional vote material I sent via fax today?
> Will I be getting your nominations for the peer review group this week and an update on your progress with planning the July hearing on voter ID?
>
> K
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123 Lettertoofficals.doc

Deliberative Process
Privilege

DRAFT LETTER TO LOCAL ELECTION OFFICIALS

The U.S. Election Assistance Commission (EAC) has awarded the Rutgers, The State University of New Jersey, a contract to study provisional voting based on experiences from the 2004 election. The research will address key questions related to provisional voting in the context of effective election administration, voter access and ballot security. The study will develop recommendations for EAC to consider in the development of its guidance to the states for the 2006 elections.

As you know, EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency that provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

An important part of our research will be a survey of local election officials across the country. You have been randomly selected to participate in the survey, which will ask about your experiences in administering the provisional voting process in the federal election that took place in November 2004.

A survey researcher from _______________ will call you during the week of _______________. The researcher will ask you several questions about your experience with provisional voting your evaluation of the process, and your recommendations to improve it. The survey will take about 15 minutes, and you need do nothing to prepare for it. You will not be identified as having participated in the study and no statement or comment you make will be ascribed to you in our report or in the project files.

At the contract's conclusion, we will present a report to the EAC including an analysis of provisional voting procedures as well as potential alternatives to existing practices and procedures. The EAC will publish its proposed guidance document in the Federal Register for public review and comment, and the EAC will hold a hearing on the guidance document this fall before adopting it.

Your participation in the study will be important in assuring that it reflects the views of election officials who have direct experience with provisional voting.

"Tom O'Neill" [redacted]
06/22/2005 10:09 AM

To klynndyson@eac.gov
cc
bcc
Subject RE: Revised Work Plan --Gantt Chart

Karen: Lauren Vincelli at Eagleton printed out 3 copies of the pdf version of the Gantt chart and is sending it to you via Fed Ex today. I expect you will receive it before the end of the week. If you don't have it by Frday noon, please call me and we'll trak the shipment.

Tom

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Tuesday, [redacted] 2005 2:01 PM
> **To:** [redacted] lotero@eac.gov
> **Subject:** RE: Revised Work Plan --Gantt Chart
>
> Tom-
>
> I understand from EAC staff that we have just purchased the Microsoft project software, but that it won't be on our systems for a few weeks.
>
> Please Fed Ex several 11 X 17 copies of the chart to me.
>
> Thanks
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

"Tom O'Neill" <tom_oneill@verizon.net>

06/20/2005 12:19 PM

To klynndyson@eac.gov
cc
Subject RE: Revised Work Plan --Gantt Chart

Karen:

I just downloaded the same file I sent you. It is formatted for printing at 11x17, and I had no difficulty magnifying it to that size on my computer screen. I don't have a printer than handles paper that size so I can't print it myself. The only other format I have available is a Microsoft project file, and that is attached. (Although in my experience pdf files are the easiest to handle.)

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, June 20, 2005 12:04 PM
To: [redacted]
Cc: lotero@eac.gov
Subject: Re: Revised Work Plan --Gantt Chart

Happy Monday, Tom

The EAC Research Associate and I are having difficulty reading the Gantt chart you sent and need it sent in a format in which we can enlarge it to at least 11X 17.

I'd like to be able to share this with the Commissioners later on this afternoon, but understand if your not able to convert it by then.
Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" [redacted]
06/21/2005 03:54 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Revised Work Plan --Gantt Chart

Karen: The Rutgers staff is arranging to print the Gantt Chart. We'll ship it off to you just as soon as it is ready.

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, June 21, 2005 2:01 PM
To: [redacted]lotero@eac.gov
Subject: RE: Revised Work Plan --Gantt Chart

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Karen Lynn-Dyson
Research Manager
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"Tom O'Neill" [redacted]

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Research Manager
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1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill"
[redacted]
06/15/2005 11:49 AM

To klynndyson@eac.gov
cc
bcc
Subject RE: Election Day Study & Survey of Local Officials

History: This message has been replied to.

Thanks, Karen.

The Gantt chart is in process, as is an update, summary narrative of our approach to the work.

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, June 15, 2005 11:45 AM
To: [redacted]
Subject: RE: Election Day Study & Survey of Local Officials

Tom-

In addition to the e-mail just sent regarding the draft chapter report on provisional votes-

Please get your Gantt chart that describes the project workplan to me as soon as possible.

Thanks

Karen
Karen Lynn-Dyson
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Jeannie Layson/EAC/GOV
06/14/2005 08:17 AM

To "Tom O'Neill" [redacted]
cc klynndyson@eac.gov, cpaquette@eac.gov
bcc
Subject Re: Revised Release Draft 2

History: This message has been forwarded.

Tom,
The revised release incorporating our changes is attached. Call me if you have any questions, and thank you for your patience throughout this process. Please let me know when it's released.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100

www.eac.gov Eagleton release rev.doc

Deliberative Process Privilege

Rutgers

News
Office of Media Relations
ur.rutgers.edu/medrel

Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 13, 2005

DRAFT FOR APPROVAL

EDITOR'S NOTE: ATTENTION POLITICAL, ASSIGNMENT EDITORS

EAGLETON INSTITUTE OF POLITICS WINS $560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION

Rutgers Institute to Study Provisional Voting, Voter Identification Procedures

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a $560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to consider in the development of its guidance to the states for the 2006 elections, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security.

Eagleton will examine the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of potential alternatives to existing practices and procedures.

"Tom O'neill"
[redacted]
07/13/2005 12:29 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Peer Review Group

Thank you, Karen.

Tom

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, July 13, 2005 11:05 AM
To: [redacted]
Cc: cpaquette@eac.gov; twilkey@eac.gov
Subject: RE: Peer Review Group

Tom-

I will take up the matter of next steps with the Peer Review Group, with Tom Wilkey, the EAC Executive Director ASAP.

I will have an answer regarding the EAC's suggested next steps on how to proceed on this matter as quickly as possible.

Regards-

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]

n.net>

07/12/2005 07:17 PM
To cpaquette@eac.gov
ccireed@rutgers.edu, john.weingart@rutgers.edu, klynndyson@eac.gov, lauracw@columbus.rr.com, foley.33@osu.edu, rmandel@rci.rutgers.edu
SubjectRE: Peer Review Group

Carol,

I sent you the email on the Peer Review Group because you asked me to. When we discussed the issue in New York, you told me to send to you in writing our response to the Commission's suggestions for a new, more elaborate review process. I believe I copied Karen on that email.

Learning now, almost a week later, that you have taken no action is disheartening. As you know, our schedule is tight, and we need the counsel the Peer Review Group can provide. I hope, therefore, that Karen will take immediate action to resolve the situation so we can begin to recruit the review group in time to assure the quality of the resource design.

Tom O'Neill

-----Original Message-----
From: cpaquette@eac.gov [mailto:cpaquette@eac.gov]
Sent: Tuesday, July 12, 2005 6:37 PM
To: klynndyson@eac.gov
Cc: Foley, Ned; reed, ingrid; Weingart, John; Laura Williams; Mandel, Ruth; Tom O'Neill
Subject: Re: Peer Review Group

Karen, Tom -

I am not taking any action on the email Tom sent a few days ago regarding the Peer Review Group because the Eagleton project is not my responsibility. As I indicated earlier to Karen, I didn't know why this was sent to me since Karen is the Project Manager. I endorse her comment below regarding the need for including her in all correspondence with anyone at the EAC regarding the project.

When I was the Interim Executive Director it was part of my job to stay on top of all EAC project work. I now have other responsibilities at the EAC, and while I am happy to continue involvement in other projects for continuity and transition purposes as needed, that needs to be very limited. My involvement with the Eagleton work has only been from the contracting perspective, and that is the only continuing role I have. Any substantive project activities have to be taken up with Karen.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen
Lynn-Dys
on/EAC/G
OV

07/12/200
5 05:08
PM

To [redacted]
cc "Paquette, Carol" <cpaquette@eac.gov>, "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams" <lauracw@columbus.rr.com>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>
Subject Re: Peer Review Group Link

Tom-

I trust you are in contact with Carol and Julie regarding the information on the Peer Review Group and the July 28 hearing at Cal/Tech that you have requested of them, respectively.

While the EAC is a small agency with relatively few reporting layers, I suggest that for all future items requiring feedback and decisions from the EAC, that you are certain to carbon copy me on all e-mails.

This will ensure, that as your primary point of contact, I have a record of all communication that has taken place between the contractor and the agency.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" [redacted]

07/08/2005
03:41 PM

To"Paquette, Carol" <cpaquette@eac.gov>
cc"Laura Williams" <lauracw@columbus.rr.com>, "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
SubjectPeer Review Group

Carol,

After our discussion in New York, you asked me to put in writing our response to the EAC's suggestions for expanding the number and kinds of groups that would review and comment on our work. I hope after your review of this response, we will be able to quickly recruit a balanced Peer Review Group (PRG) and move ahead as the schedule in our work plan indicates. Attached is a revised list of the members we propose for appointment to the PRG. We will probably not be able to persuade all of them to serve, but the number and range of views included on the proposed list should ensure that the resulting group is well-balanced.

Tom

RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG

Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

1. Not sufficient conservative representation on the PRG

2. Create a "tiered process" of review in which:

A. The PRG will prepare a dispassionate analysis of the issues and draw some tentative conclusions.

B. PRG's analysis would be vetted by a defined/select group of local election officials.

C. A defined/select group of advocacy organizations would review the comments of the local election officials

D. Empanel a final focus group of local election officials, advocates and academics for an overall, interactive reaction to the analysis and recommendations.

Project Team Response

Creating three new committees to the review process to supplement the work of the Peer Review Group (PRG) is possible, but would add at least 8 weeks –and possibly 12 weeks-- to our completion of the guidance document on provisional voting. We believe this delay would risk limiting the value of this project for the 2006 election. In addition, the change would add at least $30,000 to the cost of our work. (See the attached table showing the possible effect on our work plan, and note the optimistic assumptions such as the ability to hold a hearing the week after Christmas.). If the same groups were to be engaged in reviewing our work on Voter ID, the time for that work would also have to be stretched at a similar increased cost.

This additional cost and the added time might be worthwhile. . . if the new layers of review were to produce a consensus on how to strengthen the research, sharpen the analysis, and increase the relevance of the Guidance Document. Our team concluded, however, that additional review groups were unlikely to achieve these results.

PRG focuses on quality of research

We believe that our research would be strengthened by a balanced Peer Review Group that will focus on the design of the research and our conduct of it. Based on the EAC's recommendation, we have revised the composition of the PRG to include additional, well-recognized authorities in the field whose perspective is generally agreed to be conservative.

The PRG will focus on the strength of the research design and the quality of our analysis, not on the politics of our recommendations for the guidance document. The PRG will critique the research design and suggest how to strengthen it. Members of the group will review the quality of our analysis so that we can fill holes and correct errors before we make policy recommendations to the EAC. The PRG may or may not meet as a group. The likelihood is that most comments will come in writing from individual members, most of whose schedules would not permit attendance at meetings. In any case, the PRG members will not gather around a table to come to consensus on the study's recommendations.

While using the PRG as a forum to reach consensus on the knotty issues involved does not appear practical, the EAC can benefit from the work of other groups in this regard. It is not necessary for this project to duplicate the deliberative processes of the Carter-Baker Commission, the Century Foundation and the Election Center. The EAC itself as well as the project team can get the benefit of these reports without duplicating this "policy evaluation board" structure as part of this contract.

Project Team focuses on analysis and recommendations

Karen reported that the Commissioners believed that the PRG would "prepare a dispassionate analysis of the issues and draw some tentative conclusions." As we see it, the PRG will neither analyze data nor draw conclusions, tentative or otherwise. Its members will review and comment on how the Project Team has designed and carried out the research. Analysis, conclusions and recommendations are the responsibility of the Project Team. We have all seen in the preface to books or articles a sentence or two that read something like this, "The author thanks Mr. X, Ms. Y, and Dr. Z for their review and comment on the manuscript. Their analysis has strengthened the work, but they are in no way responsible for errors or for my conclusions." That is the way we think about the Peer Review Group.

In short, the PRG will help ensure that EAC's Guidance Document is founded on a solid base of data and analysis. The review and comment on the Preliminary Guidance Document by the EAC's Board of Advisors and Standards Board will provide participation by important stakeholder groups without the need for the other review committees. This Board is broad-based and represents a key stakeholder group. It also enjoys a significant advantage over a "defined/select" group we might empanel. Any group we define will be open to criticism or charges of bias by representatives of interest groups not represented.

The criticism and charges of bias might be tolerable, but only if we could expect consensus from the "defined/select" group we would appoint. We believe that consensus would be elusive. In empanelling a "defined/select" group, we would naturally look for balance and would appoint members to represent a point of view or an institutional interest. As representatives they would likely feel that they had little choice but to be strong advocates. They would have little incentive to compromise. Our research, as opposed to our policy recommendations, would be better served by the analysis of scholars than by the advocacy of interests.

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Carol A. Paquette/EAC/GOV
07/12/2005 07:49 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Fw: Peer Review Group

Karen -

Please see Tom's email below. I checked his previous email on the peer review group and you were copied. Maybe you didn't get this because of the email problem you were having. Anyhow, I'm not responding to his latest message, just letting it drop.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
----- Forwarded by Carol A. Paquette/EAC/GOV on 07/12/2005 07:45 PM -----

"Tom O'Neill"
[redacted]
07/12/2005 07:17 PM

To cpaquette@eac.gov
cc ireed@rutgers.edu, john.weingart@rutgers.edu, klynndyson@eac.gov, lauracw@columbus.rr.com, foley.33@osu.edu, rmandel@rci.rutgers.edu
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U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV
07/12/2005 05:08 PM

To "Tom O'Neill" [redacted]
cc "Paquette, Ca[redacted]oley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams" <lauracw@columbus.rr.com>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>
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"Tom O'neill"
[redacted]
07/12/2005 07:17 PM

To cpaquette@eac.gov
cc ireed@rutgers.edu, john.weingart@rutgers.edu, klynndyson@eac.gov, lauracw@columbus.rr.com, foley.33@osu.edu, rmandel@rci.rutgers.edu
bcc
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History: This message has been replied to.

Carol,

I sent you the email on the Peer Review Group because you asked me to. When we discussed the issue in New York, you told me to send to you in writing our response to the Commission's suggestions for a new, more elaborate review process. I believe I copied Karen on that email.

Learning now, almost a week later, that you have taken no action is disheartening. As you know, our schedule is tight, and we need the counsel the Peer Review Group can provide. I hope, therefore, that Karen will take immediate action to resolve the situation so we can begin to recruit the review group in time to assure the quality of the resource design.

Tom O'Neill

-----Original Message-----
From: cpaquette@eac.gov [mailto:cpaquette@eac.gov]
Sent: Tuesday, July 12, 2005 6:37 PM
To: klynndyson@eac.gov
Cc: Foley, Ned; reed, ingrid; Weingart, John; Laura Williams; Mandel, Ruth; Tom O'Neill
Subject: Re: Peer Review Group

Karen, Tom -

I am not taking any action on the email Tom sent a few days ago regarding the Peer Review Group because the Eagleton project is not my responsibility. As I indicated earlier to Karen, I didn't know why this was sent to me since Karen is the Project Manager. I endorse her comment below regarding the need for including her in all correspondence with anyone at the EAC regarding the project.

When I was the Interim Executive Director it was part of my job to stay on top of all EAC project work. I now have other responsibilities at the EAC, and while I am happy to continue involvement in other projects for continuity and transition purposes as needed, that needs to be very limited. My involvement with the Eagleton work has only been from the contracting perspective, and that is the only continuing role I have. Any substantive project activities have to be taken up with

Karen.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV

07/12/2005 05:08 PM

To "Tom O'Neill" [redacted]

cc "Paquette, Carol" <cpaquette@eac.gov>, "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams" <lauracw@columbus.rr.com>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>

Subject Re: Peer Review GroupLink

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I trust you are in contact with Carol and Julie regarding the information on the Peer Review Group and the July 28 hearing at Cal/Tech that you have requested of them, respectively.

While the EAC is a small agency with relatively few reporting layers, I suggest that for all future items requiring feedback and decisions from the EAC, that you are certain to carbon copy me on all e-mails.

This will ensure, that as your primary point of contact, I have a record of all communication that has taken place between the contractor and the agency.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom
O'Neill"
[redacted]

07/08/2005
03:41 PM

To"Paquette, Carol" <cpaquette@eac.gov>
cc"Laura Williams" <lauracw@columbus.rr.com>, "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
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Tom

RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG

Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

1. Not sufficient conservative representation on the PRG

2. Create a "tiered process" of review in which:

A. The PRG will prepare a dispassionate analysis of the issues and draw some tentative conclusions.

B. PRG's analysis would be vetted by a defined/select group of local election officials.

C. A defined/select group of advocacy organizations would review the comments of the local election officials

D. Empanel a final focus group of local election officials, advocates and academics for an overall, interactive reaction to the analysis and recommendations.

Project Team Response

Creating three new committees to the review process to supplement the work of the Peer Review Group (PRG) is possible, but would add at least 8 weeks –and possibly 12 weeks– to our completion of the guidance document on provisional voting. We believe this delay would risk limiting the value of this project for the 2006 election. In addition, the change would add at least $30,000 to the cost of our work. (See the attached table showing the possible effect on our work plan, and note the optimistic assumptions such as the ability to hold a hearing the week after Christmas.). If the same groups were to be engaged in reviewing our work on Voter ID, the time for that work would also have to be stretched at a similar increased cost.

This additional cost and the added time might be worthwhile. . . if the new layers of review were to produce a consensus on how to strengthen the research, sharpen the analysis, and increase the relevance of the Guidance Document. Our team concluded, however, that additional review groups were unlikely to achieve these results.

PRG focuses on quality of research

We believe that our research would be strengthened by a balanced Peer Review Group that will focus on the design of the research and our conduct of it. Based on the EAC's recommendation, we have revised the composition of the PRG to include additional, well-recognized authorities in the field whose perspective is generally agreed to be conservative.

The PRG will focus on the strength of the research design and the quality of our analysis, not on the politics of our recommendations for the guidance document. The PRG will critique the research design and suggest how to strengthen it. Members of the group will review the quality of our analysis so that we can fill holes and correct errors before we make policy recommendations to the EAC. The PRG may or may not meet as a group. The likelihood is that most comments will come in writing from individual members, most of whose schedules would not permit attendance at meetings. In any case, the PRG members will not gather around a table to come to consensus on the study's recommendations.

While using the PRG as a forum to reach consensus on the knotty issues involved does not appear practical, the EAC can benefit from the work of other groups in this regard. It is not necessary for this project to duplicate the deliberative processes of the Carter-Baker Commission, the Century Foundation and the Election Center. The EAC itself as well as the project team can get the benefit of these reports without duplicating this "policy evaluation board" structure as part of this contract.

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Karen reported that the Commissioners believed that the PRG would "prepare a dispassionate analysis of the issues and draw some tentative conclusions." As we see it, the PRG will neither analyze data nor draw conclusions, tentative or otherwise. Its members will review and comment on how the Project Team has designed and carried out the research. Analysis, conclusions and recommendations are the responsibility of the Project Team. We have all seen in the preface to books or articles a sentence or two that read something like this, "The author thanks Mr. X, Ms. Y, and Dr. Z for their review and comment on the manuscript. Their analysis has strengthened the work, but they are in no way responsible for errors or for my conclusions." That is the way we think about the Peer Review Group.

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Carol A. Paquette/EAC/GOV
07/12/2005 06:36 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams"
bcc
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(202)566-3125 cpaquette@eac.gov
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PROPOSED MEMBERSJuly6.doc

Carol A. Paquette/EAC/GOV
06/10/2005 02:10 PM

To Gracia Hillman/EAC/GOV@EAC
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Paul
bcc
Subject Re: Eagleton draft press release

Made essentially the same comment to Jeannie regarding the guidance language in paragraph two. We had no input to the creation of this release, so there is no EAC intent to use this as a trial balloon.

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
Gracia Hillman/EAC/GOV

Gracia Hillman/EAC/GOV
06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV
cc Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV, Juliet E. Thompson/EAC/GOV, "Tom Wilkey" <twilkey@nycap.rr.com>
Subject Re: Eagleton draft press release

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It seems to me that EAC will develop the guidance based on Eagleton's findings.

Also, I do not think the press release should contain the list of questions. Are they/we trying to float a trial balloon and elicit initial reaction at this early stage of the study??

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Jeannie Layson
Sent: 06/10/2005 12:57 PM
To: Gracia Hillman; Raymundo Martinez; Paul DeGregorio
Cc: Karen Lynn-Dyson; Carol Paquette; Juliet Thompson
Subject: Eagleton draft press release

Commissioners,
Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also

attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

DRAFT FOR APPROVAL

EAGLETON INSTITUTE OF POLITICS WINS $560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION

Rutgers Institute to Study Provisional Voting, Voter Identification Procedures

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a $560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security. Questions include:

- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?

- Did local procedures reflect the state's uniform procedures?
- Did all states and election jurisdictions make these procedures available to the public, political parties and candidates before the election?

- To what extent were poll workers appropriately trained on how to administer provisional ballots, including establishing the identity of the potential voter seeking a provisional ballot?

- How were federal funds under the Help America Vote Act used to educate voters about their rights to cast a provisional ballot and where such provisional ballots must be cast to be counted?

- In states where a provisional ballot had to be cast at the voter's assigned polling place or precinct, was information available to poll workers to allow them to determine the voter's assigned precinct and polling place?

- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.
At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of alternatives to existing practices and procedures.

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1225 New York Ave., NW
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Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Carol A. Paquette/EAC/GOV
06/10/2005 02:09 PM

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cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Paul
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- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of alternatives to existing practices and procedures.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100

www.eac.gov Eagleton release.doc

Jeannie Layson/EAC/GOV
06/10/2005 11:30 AM

To "Tom O'Neill" [redacted]
cc klynndyson@eac.gov
bcc
Subject Re: Revised release for Eagleton Research

Tom,
Attached is the press release with a few minor edits, but it still does not contain a brief description of the methodology. Please provide that language so I can give the final version to the chair for her approval.
Thanks. My number is 202-566-3103 if you have questions.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov news release 2.doc

Deliberative Process Privilege

Rutgers

News
Office of Media Relations
ur.rutgers.edu/medrel

Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 2, 2005

DRAFT FOR APPROVAL

EDITOR'S NOTE: ATTENTION POLITICAL, ASSIGNMENT EDITORS

EAGLETON INSTITUTE OF POLITICS WINS $560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION

Rutgers Institute to Study Provisional Voting, Voter Identification Procedures

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Deleted: US

Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

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Deleted: The US

Deleted: election system

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security.

-more-

Questions include:

- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?
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EAC'S COMMUNICATIONS MANAGER JEANNIE LAYSON WANTS THE RELEASE TO INCLUDE A PARAGRAPH SUMMARIZING THE METHODS WE WILL USE TO ANSWER THE QUESTIONS POSED IN THE BULLETED LIST ABOVE. SHE WANTS TO REVIEW THE REVISED RELEASE BEFORE SUBMITTING TO THE EAC CHAIR FOR APPROVAL.

202-566-3103 or jlayson@eac.gov

050602-x
EIP-USEACVoterContract.rel.ed

"Tom O'Neill" [redacted]

06/08/2005 12:47 PM

To jlayson@eac.gov

cc klynndyson@eac.gov, john.weingart@rutgers.edu

bcc

Subject Revised release for Eagleton Research

History: This message has been forwarded.

Jeannie:

Attached is the news release we discussed yesterday, with the addition you requested.

As I mentioned, we are eager to make this announcement.

Thanks,

Tom

NewsRelease1.doc

Deliberative Process Privilege

Rutgers

News
Office of Media Relations
ur.rutgers.edu/medrel

Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 2, 2005

DRAFT FOR APPROVAL

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-more-

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202-566-3103 or jlayson@eac.gov

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

050602-x
EIP-USEACVoterContract.rel.ed

Jeannie Layson/EAC/GOV
06/03/2005 08:51 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: Press Release on Research Contract Award

I know this is a silly question... but do they have to issue a press release?

My edits are attached. But per my earlier email, the chair and the other commissioners should sign off on this. One question I had that wasn't answered by the press release: Who are they surveying? The public? Election officials? What's the methodology? Sample size? In other words, if a reporter asked me those questions, I could not get the info from this press release. NewsRelease jl edits.doc

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Deliberative Process Privilege

Rutgers

News
Office of Media Relations
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Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 2, 2005

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Deleted: national

Deleted: the US

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Deleted: The US

Deleted: election system guidelines

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-more-

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THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

050602-x
EIP-USEACVoterContract.rel.ed

Jeannie Layson/EAC/GOV
06/02/2005 07:01 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Press Release on Research Contract Award

I also want to make sure the chair approves of the content. I assume they can wait until we get her approval.

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 06/02/2005 05:04 PM
To: Jeannie Layson
Subject: Fw: Press Release on Research Contract Award

Jeannie-

Please review/revise and correct, as necessary.

Thanks

K
Karen Lynn-Dyson
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/02/2005 05:00 PM -----

"Tom O'Neill"
[redacted]
06/02/2005 04:40 PM

To klynndyson@eac.gov
cc
Subject Press Release on Research Contract Award

Karen:

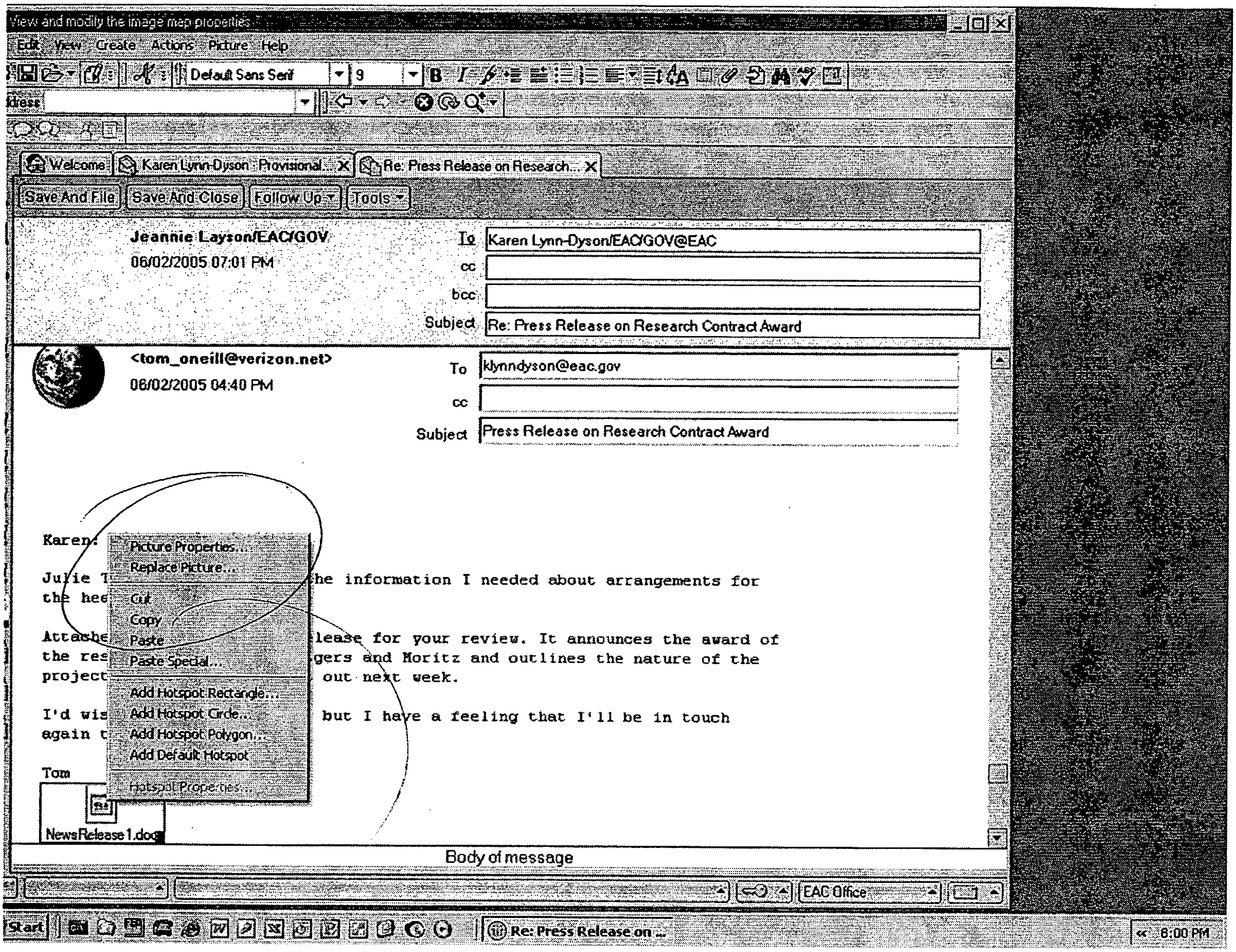
Julie Thompson did give me the information I needed about arrangements for the hearing. Thanks.

Attached is a draft press release for your review. It announces the award of the research contract to Rutgers and Moritz and outlines the nature of the project. We'd like to get it out next week.

I'd wish you a good weekend, but I have a feeling that I'll be in touch again tomorrow.

Tom

NewsRelease1.doc



Jeannie Layson/EAC/GOV
06/02/2005 07:01 PM

To: Karen Lynn-Dyson/EAC/GOV@EAC
cc:
bcc:
Subject: Re: Press Release on Research Contract Award

<tom_oneill@verizon.net>
06/02/2005 04:40 PM

To: klynndyson@eac.gov
cc:
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again t

Tom

AN IMAGE OF A FILE;
NO FILE W/ MESSAGE.

P.S

"Tom O'Neill"
[redacted]
06/02/2005 05:30 PM

To jthompson@eac.gov
cc ireed@rutgers.edu, "Edward Foley" <foley.33@osu.edu>, klynndyson@eac.gov
bcc
Subject June 30 Hearing Panelists

History: This message has been forwarded.

Julie:

Thanks for you call. Our conversation helped me crystallize further the recommendations we will make to the Commission about the material to be covered at the hearing.

I believe we will recommend two panels of 3 or 4 people each for the June 30 hearing. One will cover the relatively narrow HAVA Voter ID requirements with presentations by 2 state-level voting administrators with contrasting experiences. The contrast between Michigan and Pennsylvania might prove especially instructive because it would demonstrate the relationship between the quality of the data base and requirements for voter identification. Since the hearing is being held in Manhattan, perhaps inviting a speaker from New York instead of Pennsylvania would make sense. I'd appreciate your thoughts on that.

Two other speakers could address the issue of broader Voter ID requirements to reduce vote fraud by requiring some form of identification for each voter at the polling place. The experience in Mississippi over the past 5 years has been particularly dramatic, as illustrated by the attached news article from the local press last year. As we discussed, inviting the 2 legislators profiled in the article might make for powerful testimony.

The final 2 speakers we believe should be academics who have studied the relationship between Voter ID regimes, voter participation and vote fraud and who have conflicting evidence and conclusions to offer. We have found at least two university based researchers who can present the view that stricter Voter ID requirement do not reduce vote fraud and do dampen participation. We have not yet identified a researcher from the other end of the spectrum, but we are looking actively. Your suggestions would be most welcome.

Below is our current list of possibilities for your review.

Tom

JUNE 30 HEARING
<u>POSSIBLE PANELISTS OR TOPICS</u>

Possible States to be represented by one or more panelists

Mississippi
Debate over voter id issues has been dramatic. The resonance of Mississippi on voting issues would lend interest to the testimony. Voter id legislation was not approved in the current legislative session and has been a source of contention at least since 1999.

Michigan
Strong database state; lax Voter ID requirements don't seem to present as much of a problem (although one hears rumors about Detroit); interesting contrast to NY. With Pennsylvania would present contrasts in the importance of the Statewide Voter Data Base

New York
Had a significant problem with provisional ballots, suggesting that their relatively lax ID rules might be problematic; also Tom Wilkey will have good contacts there. The hearing is there.

Pennsylvania
Relatively lax ID rules and apparently quite a few problems with provisional ballots in 2004. Had start up problems with its data base and would offer comparisons between counties where the data base was well established and those where is new. Should be weighed against New York for inclusion as a contrast with Michigan

Wisconsin
Governor Doyle vetoed the legislature's first attempt at tightening voter ID requirements, and instead offered a package to recruit and train more qualified poll workers and calls for improvements in voter registration procedures.

Academics on Voter ID, Turnout, and Vote Fraud

Spencer Overton
Professor, GWU Law School. Has written op-eds arguing that the empirical research is insufficient to support the need for more ID to reduce fraud. He is working on a book on the topic.

John Fortier
Research Fellow at the American Enterprise Institute. Recommended by Norm Ornstein. Google revealed no publications on this topic by Fortier.

Lorraine C. Minnite
Assistant Professor of Political Science, Barnard College. Lead researcher of the Demos election fraud study and researcher in immigrant voting patterns. Found that the incidence of fraud perpetrated by individual voters in the United States was very low and had a minimal impact on election outcomes.

Guy-UrielCharles
Associate Professor of Law, Center for the Study of Political Psychology University of Minnesota. His areas of interest incoude Election Law and Election Law Disputes and African American Voting Concerns. He is a member of the National Research Commission on Elections and Voting of the Social Science Research Council

"Tom O'Neill"
[redacted]
06/02/2005 04:40 PM

To klynndyson@eac.gov
cc
bcc
Subject Press Release on Research Contract Award

History: This message has been forwarded.

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June 2, 2005

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-more-

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THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

050602-x
EIP-USEACVoterContract.rel.ed

Juliet E. Thompson/EAC/GOV
06/02/2005 12:27 PM

To [redacted]
cc Karen Lynn-Dyson/EAC/GOV@EAC, Carol A. Paquette/EAC/GOV@EAC
bcc
Subject Re: Arrangements for June 30 Meeting

Tom,

The following answers, I hope, your questions. I am happy to discuss this further.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

EAC has a meeting location for this meeting and the hearing that will follow. The meeting and hearing will be held at the Marriot Marquis Hotel. I will have staff provide the adddress and room.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

While EAC has not yet made arrangements for a transcriber, we will as we will need one for the meeting and the hearing.

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

Yes, EAC will have staff available for this function.

4. Will the EAC issue the news release about the meeting and the panel?

Yes.

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

Federal travel regulations apply. However, once you have made recommendations on panelists and the Commission has approved those panelists, we will take care of their travel arrangements and accommodations.

Arizona, California, Mississippi, .Michigan, New York, Pennsylvania, and Wisconsin.

I can imagine that the Commission will not want to use Arizona. There is a great deal of controversy around some proposed legislation that was introduced and passed by the Arizona legislature last year. EAC has not yet taken a position on that controversy, but may. Until such time as EAC has formalized its opinion on this, EAC will not want to invite a public debate on this issue.

I will call you later to discuss any questions or concerns. I am in a meeting from 1 - 3 (EDT)

Juliet E. Thompson
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
"Tom O'Neill" <tom_oneill@verizon.net>

"Tom O'Neill"
[redacted]
06/01/2005 10:47 PM

To jthompson@eac.gov
cc klynndyson@eac.gov
Subject Arrangements for June 30 Meeting

Julie,

Karen Lynn-Dyson suggested I consult directly with you about arrangements for the Commission's June 30 meeting in New York. As I understood our discussions in Washington last week, as your consultants we will be responsible for organizing the portion of the meeting that will cover the Voter Identification issue, while EAC staff will organize the regular meeting of the Commissioners. Is that understanding correct?

Because time is short, we know we must move quickly on the arrangements.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

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These are the states we are currently evaluating for the Voter ID presentations: Arizona, California, Mississippi, .Michigan, New York, Pennsylvania, and Wisconsin. We may pick 4 of these, or fewer if we determine that one state should have two panelists representing different viewpoints: Karen tells me you have been working with several of these, and your counsel would sharpen the judgment we bring to bear on our selection. I am particularly interested in the Mississippi experience and would like to discuss that with you. . .perhaps by phone. The project team is aiming to agree on a panel of speakers to submit to the the EAC early next week. Panelists should receive their invitations at least two weeks in advance (more would be better), especially if we want to get onto their schedules.

I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can always reach me-- is [redacted]

Tom O'Neill

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Tom O'Neill

Carol A. Paquette/EAC/GOV
05/17/2005 06:34 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Sheila A.
bcc
Subject project kickoff meeting with EAgleton Institute

History: ✉ This message has been forwarded.

Commissioners -

We have tentatively scheduled May 26 at 2:30 for a kickoff meeting here with Eagleton Institute. What will happen at this meeting is Eagleton will introduce their key people and make a brief presentation on their approach to performing the provisional voting and voter ID studies. It will be an opportunity to ask questions, raise any concerns, and/or provide guidance as they begin this work. Please advise if you wish to attend this meeting. I expect it will last about an hour.

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Carol A. Paquette/EAC/GOV
05/13/2005 02:05 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Kick off meeting with Eagleton

Haven't gotten confirmation from them yet.

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
05/13/2005 01:14 PM

To Carol A. Paquette/EAC/GOV@EAC
cc
Subject Kick off meeting with Eagleton

Carol-

Are we still on track to have our kick-off meeting with Eagleton next Wednesday, May 18 at 1:00?

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

DeAnna M. Smith/EAC/GOV
03/29/2007 11:15 AM

To Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Fw: One more time

DeAnna M. Smith
Paralegal Specialist
Office of the General Counsel
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, D.C. 20005
202-566-3117 (phone)
202-566-1392 (fax)
www.eac.gov

----- Forwarded by DeAnna M. Smith/EAC/GOV on 03/29/2007 11:14 AM -----

Juliet E. Hodgkins/EAC/GOV
03/26/2007 12:12 PM

To DeAnna M. Smith/EAC/GOV@EAC
cc
Subject Fw: One more time

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 03/26/2007 12:12 PM -----

Juliet E. Hodgkins/EAC/GOV
03/21/2007 05:02 PM

To Donetta Davidson, Gracia Hillman, Caroline C. Hunter/EAC/GOV, Rosemary E. Rodriguez/EAC/GOV
cc jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
Subject One more time

I think that Karen and I have captured all of the changes that needed to be made including answering the question posed by Commissioner Hillman regarding footnote #2.

Please take one final look.

Voter ID edited 32107- with changed footnote.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100

EAC Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document[1] was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates[2] and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.[3]

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Declines to Adopt Draft Report

---

[1] In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

[2] The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

[3] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.[4] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

Further EAC Study on Voter Identification Requirements

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

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[4] See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

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Washington, DC 20005
(202) 566-3100

Juliet E. Hodgkins/EAC/GOV
03/21/2007 05:02 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject One more time

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Voter ID edited 32107- with changed footnote.doc

Juliet Thompson Hodgkins
General Counsel
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1225 New York Ave., NW, Ste 1100
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EAC Declines to Adopt Draft Report

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- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

"John Weingart"
<john.weingart@rutgers.edu>
03/20/2007 05:32 PM

To klynndyson@eac.gov
cc jhodgkins@eac.gov, tom_oneill@verizon.net, twilkey@eac.gov, "Tim Vercellotti" <tim.vercellotti@rutgers.edu>
bcc
Subject Re: Review of Voter ID Statement

Karen - To further my earlier email, I want to make clear that only respondents who identified themselves as U.S. citizens were asked whether they were registered to vote for the November 2004 election. And only those who said they were registered to vote were asked whether they voted in the election.

John

klynndyson@eac.gov wrote:

>
> Quick question related to The Voting Age Population estimates used to
> estimate/calculate turnout rates (see footnote 2 in the statement)-
>
> When taking into account noncitizens in the calculation were the
> noncitizens considered as part of the VAP or as the population as a
> whole?
>
>
> Thanks for clarifying this for me.
>
> Regards-
>
>
> Karen Lynn-Dyson
> Research Director
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Juliet E. Hodgkins/EAC/GOV
03/16/2007 01:42 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject What is the status of Eagleton's review

Commissioner Hunter wanted to know if Eagleton has approved the text in the 2nd paragraph of the ID statement. Please advise.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

"Rosemary Rodriguez"
[redacted]

03/09/2007 02:04 PM

To klynndyson@eac.gov
cc chunter@eac.gov, "Davidson, Donetta" <ddavidson@eac.gov>, ghillman@eac.gov, jhodgkins@eac.gov, jlayson@eac.gov
bcc
Subject Re: Final EAC statement on Voter ID report

I will be in the office Tuesday afternoon. Thanks.

----- Original Message ----
From: "klynndyson@eac.gov" <klynndyson@eac.gov>
To: [redacted]
Cc: chunter@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov; jhodgkins@eac.gov; jlayson@eac.gov
Sent: Friday, March 9, 2007 10:49:00 AM
Subject: Re: Final EAC statement on Voter ID report

Commissioners-

As requested, Jeannie Layson will take the attached statement and prepare a final version for Commissioner's review and tally vote on Monday.

Regards-

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Rosemary Rodriguez"
<rosemaryrod2003@yahoo.com>

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov
cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta" <ddavidson@eac.gov>, chunter@eac.gov
Subject Re: Final EAC statement on Voter ID report

are we now in the 48 hour tally vote period?

----- Original Message ----
From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>
To: klynndyson@eac.gov
Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>; chunter@eac.gov; rosemaryrod2003@yahoo.com
Sent: Thursday, March 8, 2007 4:35:27 PM
Subject: Re: Final EAC statement on Voter ID report

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
cc
Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Gracia Hillman/EAC/GOV
03/08/2007 05:47 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Final EAC statement on Voter ID report

Oh, I noticed.

Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins/EAC/GOV
03/08/2007 04:35 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc jlayson@eac.gov, Gracia Hillman/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, Caroline C. Hunter/EAC/GOV@EAC, rosemaryrod2003@yahoo.com
bcc
Subject Re: Final EAC statement on Voter ID report

History: This message has been replied to and forwarded.

Karen,

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Voter ID statement jth edits.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
cc
Subject Final EAC statement on Voter ID report

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Thanks

Final EAC Voter ID Statement.doc

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Deliberative Process Privilege

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

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Deleted: contractor

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EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important first step in the Commission's consideration of voter identification requirements.

Deleted: contractor's

However, EAC has concerns regarding the research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements. Therefore, EAC is not adopting the Contractor's full report that was submitted and is not releasing this report

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EAC will engage in a longer-term, more systematic review of voter identification requirements and the potential variation in turnout rates based on the types of voter identification requirements. EAC's additional study on the topic will include more than one Federal election cycle, examine additional environmental and political factors that effect voter participation, and consider the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

Deleted: .

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

Deleted: A

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Deleted: Using some of the information collected by Eagleton and assembling data from states, EAC will e

- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study, research and statistical methodologies to be employed and timelines for completing an EAC study on voter identification.

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- Study how certain voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

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- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

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- Track state policies and procedures for early voting, absentee voting, and vote-by-mail. The data collected through this tracking will then be compared to various state voter identification policies and procedures.

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Deliberative Process
Privilege

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Comment [GH1]: th respect to the last sentence in paragraph one above, it is my opinion that it would have been reasonable for Eagleton to have considered the statistical analysis they conducted as being covered by that task. Therefore, I recommend striking the word "also" from this sentence.

The contractor presented testimony summarizing its findings from this statistical and data analysis at a February 8, 2007 public meeting of the U.S. Election Assistance Commission. The contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website: www.EAC.gov.

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Comment [GH2]: I cannot craft the word

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- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform pollworkers and voters.

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- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking will then be compared to various state voter identification policies and procedures.

Deleted: ould

Gracia Hillman/EAC/GOV
03/07/2007 01:12 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, "Rosemary Rodriguez" [redacted]
bcc
Subject Re: Revised EAC Statement

Sorry but I have a 2:00 p.m. conference call. How about 3:00 or later??

"John Weingart"
<john.weingart@rutgers.edu>
01/30/2007 04:55 PM

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc
bcc
Subject February 8th EAC meeting

History: This message has been replied to.

Karen - I understand you will be a panelist on the Eagleton/Moritz Voter ID study along with Tom O'Neill and Tim Vercellotti at next Thursday's EAC meeting. Could you let us know what you will be covering so we prepare comments that will not be redundant.

Thanks. I hope your new year is off to a good start.

John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Thomas R. Wilkey/EAC/GOV
01/22/2007 05:15 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Re: Response Requested - EAC voter ID report

Eagleton is submitting it's report as written. There will be a SHORT Executive Summary prepared by staff which will incorporate. Recommenations for. Future study which the Commissioners will be asked to adopt.
The report itself will be presented but not formally adopted but merlely released and recommendations adopted.

Sent from my BlackBerry Wireless Handheld
Gavin S. Gilmour
----- Original Message -----

From: Gavin S. Gilmour
Sent: 01/22/2007 05:16 PM
To: Bryan Whitener
Cc: Jeannie Layson; Juliet Hodgkins; Karen Lynn-Dyson; Thomas Wilkey
Subject: Re: Response Requested - EAC voter ID report

Is Eagleton submitting a report to the EAC or is Eagleton assisting us the development of an EAC report...? I suspect it is the latter. Any statement should reflect this... as should the "briefing."

GG

Gavin S. Gilmour
Deputy General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

Bryan Whitener/EAC/GOV

Bryan Whitener/EAC/GOV
01/22/2007 04:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC
Subject Response Requested - EAC voter ID report

Karen,

We need to publish an FR notice early tomorrow regarding the next public meeting. In light of the recent matter regarding voter fraud, I want to be sure to accurately describe what's happening with the voter ID report item contained in the draft agenda. Please add some perspective about what will and will not be discussed and what, if any, action might be expected. The draft agenda says the following: "Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements,"John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)". What stage are we with this ? (preliminary, final, NOTA, etc.) Just trying to stay ahead of the curve,

Thanks,
Bryan

[attachment "Public Meeting, 2-08-07, Wash., Draft Agenda.doc" deleted by Thomas R. Wilkey/EAC/GOV]

"Mike Alvarez"
<rma@hss.caltech.edu>
10/02/2006 10:44 PM

To klynndyson@eac.gov
cc
bcc
Subject

History: This message has been replied to.

Hi -- hope all is well.

I've got a quick question for you. Vercellotti and Anderson have put out for public distribution what looks to be their work from their EAC report on voter identification (http://moritzlaw.osu.edu/blogs/tokaji/voter%20id%20and%20turnout%20study.pdf).
Given that this piece of their research project is available, is the rest of their work available for public distribution yet (as you know the VTP is having a conference at the end of this week on voter identification and registration, it would be nice to have access to the EAC research at the conference, even at this late date).

--
****
R. Michael Alvarez (O)
626-395-4089
Professor of Political Science (F)
626-405-9841
Caltech/MIT Voting Technology Project
California Institute of Technology
Pasadena, CA 91125
rma@hss.caltech.edu

Contributor to Election Updates,
http://electionupdates.caltech.edu/blog.html
****

Thomas R. Wilkey/EAC/GOV
06/15/2006 05:24 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Eagleton letter in response to the Chairman

We can wrap this up in the morning. In my discussions with the Chairman his view is that botrts h reports be labeled as final draft reports rather than final reports but I will double check with him.
Also any letter needs to relect the term briefing rather than meeting.

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 06/15/2006 01:22 PM
To: Thomas Wilkey
Subject: Re: Eagleton letter in response to the Chairman

Not a problem.

We (or Paul) just needs to tell them something by tomorrow.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Amie J. Sherrill/EAC/GOV
06/12/2006 08:59 AM

To Raymundo Martinez/EAC/GOV, Gracia Hillman/EAC/GOV, ddavidson@eac.gov, twilkey@eac.gov, jthompson@eac.gov@EAC, Karen Lynn-Dyson/EAC/GOV,
cc
bcc
Subject Letter from Eagleton

Please find attached a letter from the Eagleton Institute of Politics. Thank you.

Amie J. Sherrill
Special Assistant to Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106

Letter from Eagleton.pdf

EAGLETON INSTITUTE OF POLITICS

FAX COVER SHEET

Date: 6/8/06

To: Paul S. De Gregorio

Fax Number: 202-566-3127

Phone Number:

Total Number of Pages (including cover sheet): 3

Comments:

From: John Weingart X 290

191 RYDERS LANE. NEW BRUNSWICK, NJ 08901-8557

Tel: 732/932-9384
Fax: 732/932-6778

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

E-mail: eagleton@rci.rutgers.edu
Web: www.eagleton.rutgers.edu

EAGLETON INSTITUTE OF POLITICS

Paul S. DeGregorio
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
Fax: (202) 566-3127

June 8, 2006

Dear Chairman DeGregorio:

Karen Lynn-Dyson relayed the Commission's decision in your meeting of June 1 to take more time to consider how to proceed with the delivery of EAC research reports on provisional voting and voter identification.

The Eagleton-Moritz research team, of course, encourages the Commission's thoughtful consideration of the two reports, but we are mindful of the need to deliver revised documents that respond to the Commission's comments by the close of our contract on June 30th. We believe that if we receive the Commission's final comments on the Provisional Voting report by June 19 we will be able to complete any additional work that the Commission might request and incorporate the results in our final reports before the end of the contract period.

Based on suggestions raised at the meetings, we already plan to supplement the Provisional Voting report with some brief, additional information about the influence of the fail-safe ballot provisions of the National Voting Rights Act on the experience with provisional voting in 2004.

We understand that the Commission must submit the final draft Voter ID report to the same review process by your advisory boards as was followed with the Provisional Voting paper. We understand that step is a prerequisite for wider release. We would appreciate your advice on how to handle this review, given the rapidly approaching end of our contract.

We hope the commission will use both reports, as intended from the outset of this project, as the basis for recommendations for better, if not best, practices to the states. If the Commission cannot decide to issue such recommendations to the states, we hope it will promptly release the reports to provide the states and the broader elections community with this information, analysis and perspective on the issues.

We recognize, based on the reactions at the meetings of the Standards Board and, particularly, the Board of Advisors, that some of the findings, conclusions, and recommendations of the reports will be controversial with some of the Commission's constituencies. But we also believe, based on the comments of the Peer Review Group, the advisors assembled by the Commission, and our response to their critiques, that the reports are grounded on solid research by a well-qualified, nonpartisan team and that the reports will provide new information for the policy process. We believe this information will contribute to achieving the EAC mission of providing helpful information that the states may or may not choose to implement.

191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557

Tel: (732) 932-9384
Fax: (732) 932-6778

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

E-mail: eagleton@rci.rutgers.edu
Web: www.eagleton.rutgers.edu

The information in the reports can improve the policy process by raising the level of debate over increasingly volatile issues related to election administration. We believe our reports will prove useful to the states as they complete preparations for the 2006 elections. Moreover, the elections community is aware of this work, and awaits the analysis and conclusions.

We look forward to working with you to conclude this research in a way that will serve the public interest.

Very truly yours,

Tom O'Neill

Thomas M. O'Neill
Project Director

"John Weingart"
<john.weingart@rutgers.edu>
06/08/2006 10:31 AM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Tom O'Neill" [redacted]
bcc
Subject Letter to Commissioner DeGregorio

History: This message has been replied to and forwarded

Karen - I am attaching a copy of a letter we are just faxing and mailing to Commissioner DeGregorio. Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

DeGregorioFinal.060806.doc

Deliberative Process Privilege

EAGLETON INSTITUTE OF POLITICS

Paul S. DeGregorio
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
Fax: (202) 566-3127

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191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557

Tel: (732) 932-9384
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We look forward to working with you to conclude this research in a way that will serve the public interest.

Very truly yours,

Thomas M. O'Neill
Project Director

"Tom O'neill"
[redacted]
05/22/2006 04:13 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Presentations at the EAC Governing Boards

History: This message has been replied to.

Karen, Will the presentations be already loaded onto a computer/projector there? I hope so.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, May 22, 2006 3:44 PM
To: [redacted]
Subject: RE: Presentations at the EAC Governing Boards

Thanks, Tom.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]
05/22/2006 03:39 PM

To klynndyson@eac.gov
cc asherrill@eac.gov, jthompsonhodgkins@eac.gov
bcc
Subject RE: Presentations at the EAC Governing Boards

History: This message has been replied to and forwarded.

Karen,

The PowerPoint presentations for the Standards Board and the Advisory Board are attached. See you tomorrow.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, May 22, 2006 3:18 PM
To: [redacted]
Cc: asherrill@eac.gov; jthompsonhodgkins@eac.gov
Subject: RE: Presentations at the EAC Governing Boards

Hi Tom-

Just checking to see if your Power Point slides might be ready.

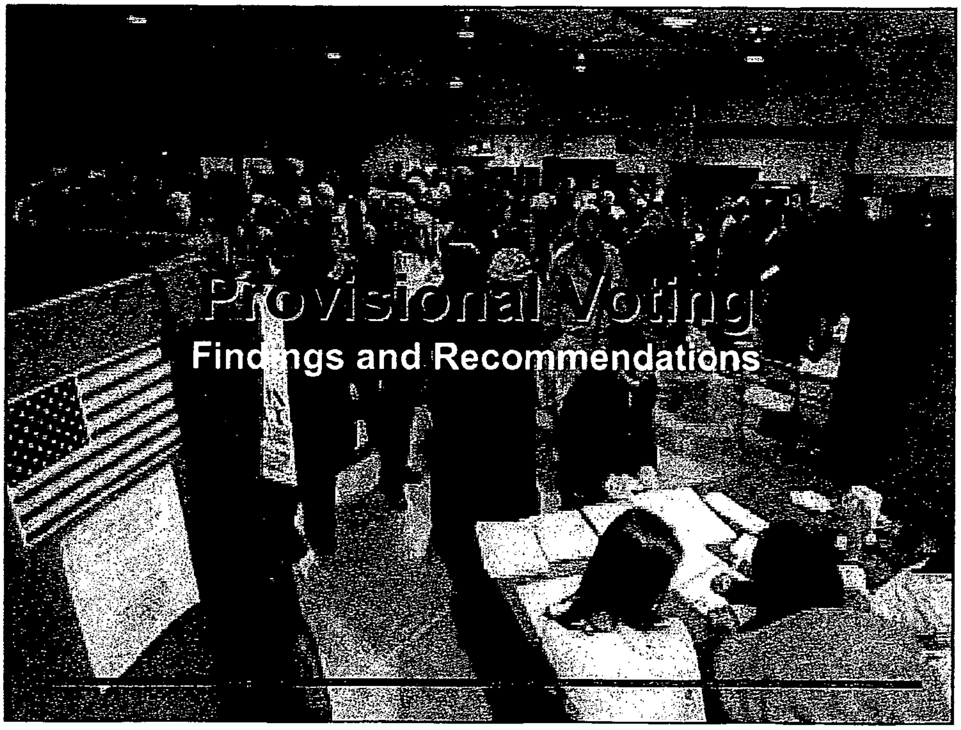
When they are, please send them on to me and hit Reply to All as Julie Hodgkins and Amie Sherrill (the Chairman's Special Assistant) would like copies before the presentation.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123 BriefinfgPVADVBD524.ppt BriefinfgPVSTDBD523.ppt

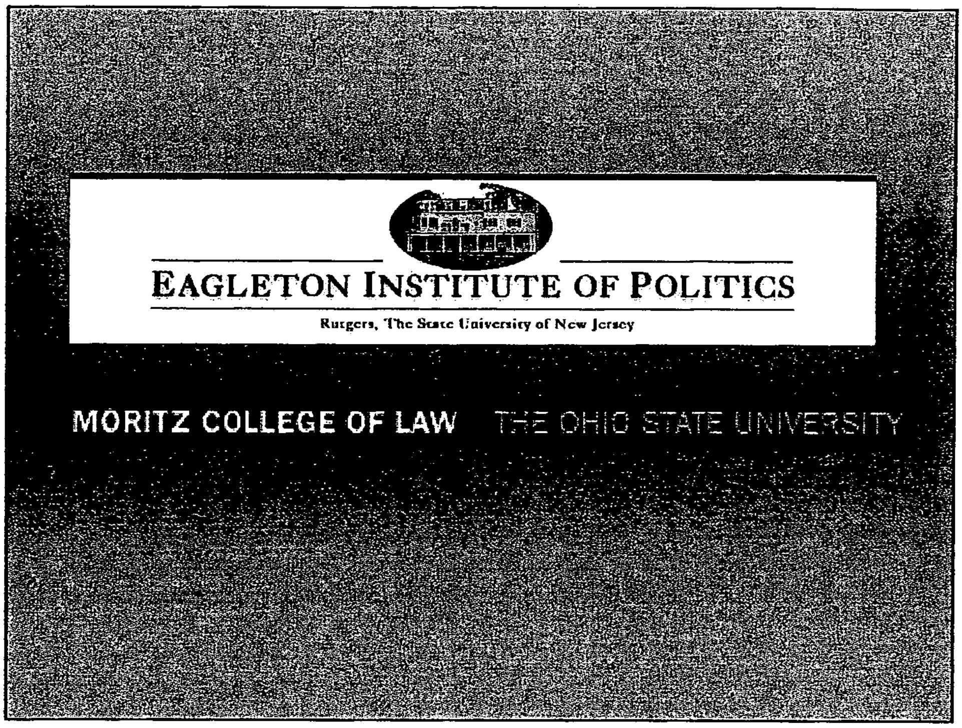
Briefing for

May 24 , 2006



Provisional Voting

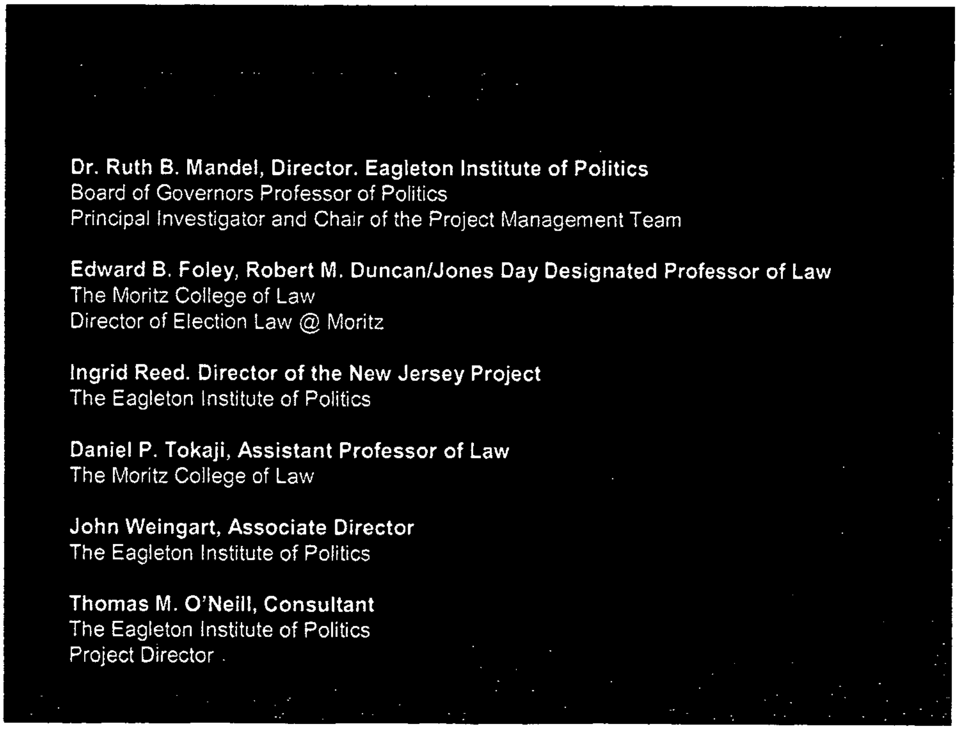
Findings and Recommendations



EAGLETON INSTITUTE OF POLITICS

Rutgers, The State University of New Jersey

MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY



Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics
Board of Governors Professor of Politics
Principal Investigator and Chair of the Project Management Team

Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law
The Moritz College of Law
Director of Election Law @ Moritz

Ingrid Reed. Director of the New Jersey Project
The Eagleton Institute of Politics

Daniel P. Tokaji, Assistant Professor of Law
The Moritz College of Law

John Weingart, Associate Director
The Eagleton Institute of Politics

Thomas M. O'Neill, Consultant
The Eagleton Institute of Politics
Project Director

QUESTIONS RAISED BY THE EAC

1. How did states prepare for HAVA's provisional voting requirements?
2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?
3. How did litigation affect the implementation of Provisional Voting?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did State and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

TO ANSWER THOSE QUESTIONS

☐Surveyed 400 local election officials

☐Reviewed the EAC's Election Day Survey

☐Analyzed states' experience with provisional voting:

--use of statewide registration database

--treatment of out-of-precinct ballots

--use of different approaches to voter ID

--consistency

--time period allowed for ballot evaluation

☐Collected provisional voting statutes and regulations

☐Analyzed litigation

Variation among the states

- In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million , or just over 63%, were counted.
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

Some sources of variation among states

Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

Administrative Arrangements

Time to evaluate ballots

--States that provided less than one week counted an average of 35.4% of their ballots.

--States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

-- States with voter registration databases counted an average of 20% of the provisional ballots cast.

-- States without databases counted 44%.

Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied considerably among and within states.

The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

---

1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

18 states were new to provisional voting; 25 others had experience.

Local election officials in the "old" states felt more confident.

Provisional ballots in "old states" : more than 2% of the total vote, 4 times the proportion in "new" states.

Counting provisional ballots in the final vote, the "old" states averaged 58% nearly double the average (33%) in "new" states.

Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.

4. How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

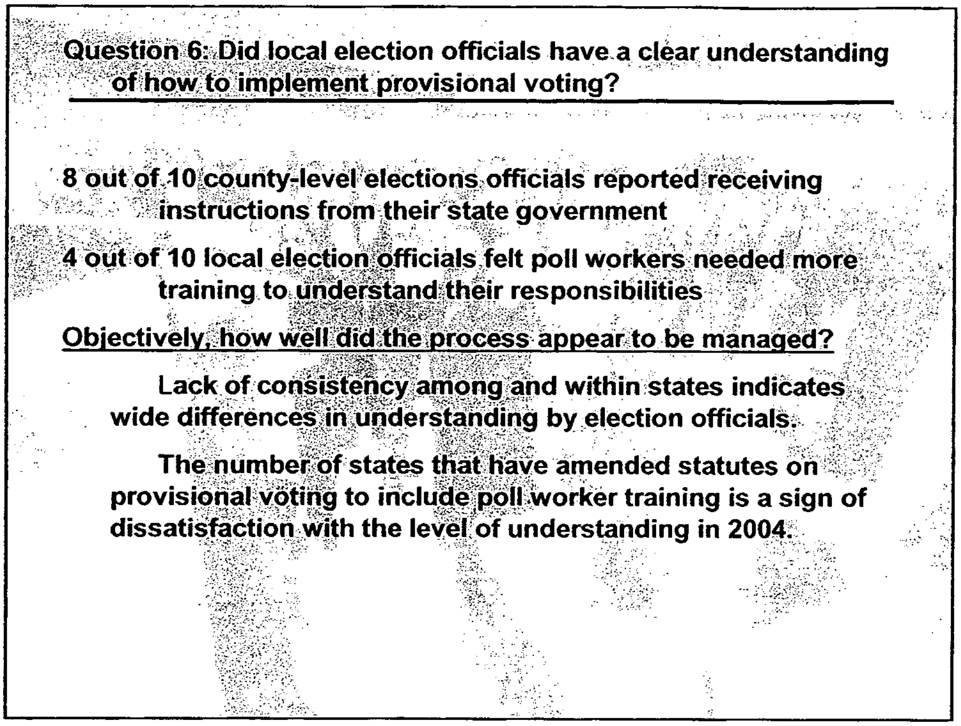
Little consistency existed among <u>and</u> within states.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

States that allowed out-of-precinct ballots counted 56% of the provisional ballots, 42% for in-precinct states.

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.



Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

Objectively, how well did the process appear to be managed?

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

BEST PRACTICES

The importance of clarity

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

Lessons of litigation for achieving clarity

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

EAC should recommend to the states that they:

☐Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

☐Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

☐Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

Assess each stage of the provisional voting process

Before the election

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

At the polling place

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

Evaluating provisional ballots

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.

Assess each stage of the provisional voting process

Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

Conclusion

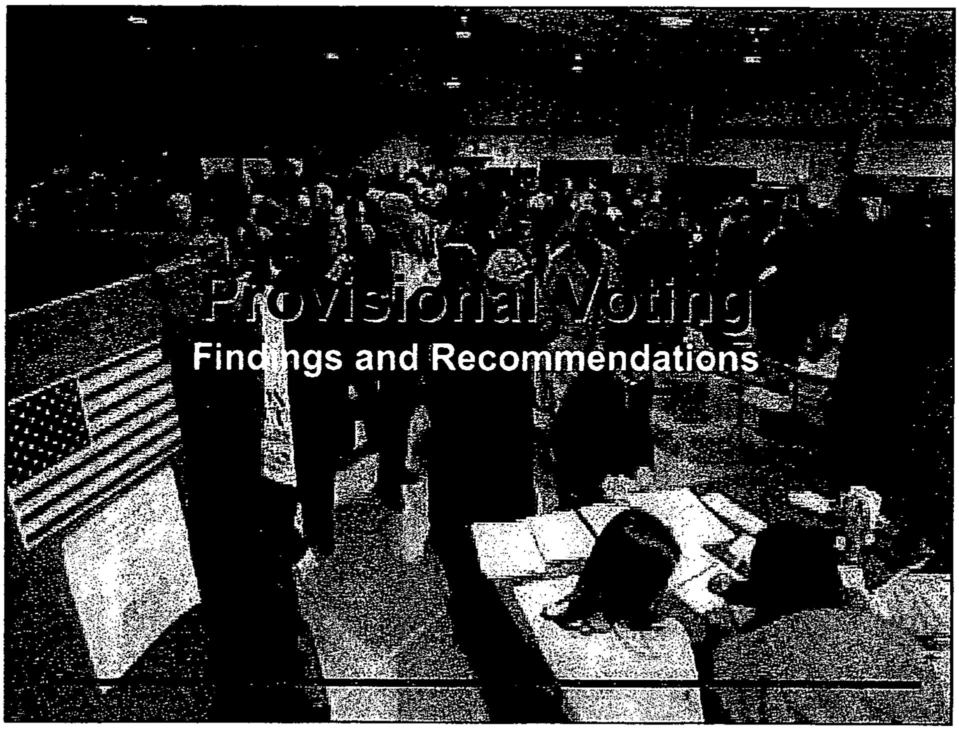
This systematic analysis constitutes a quality improvement program for provisional voting, one that holds promise for every state.

U. S. Election Assistance Commission

May 2006

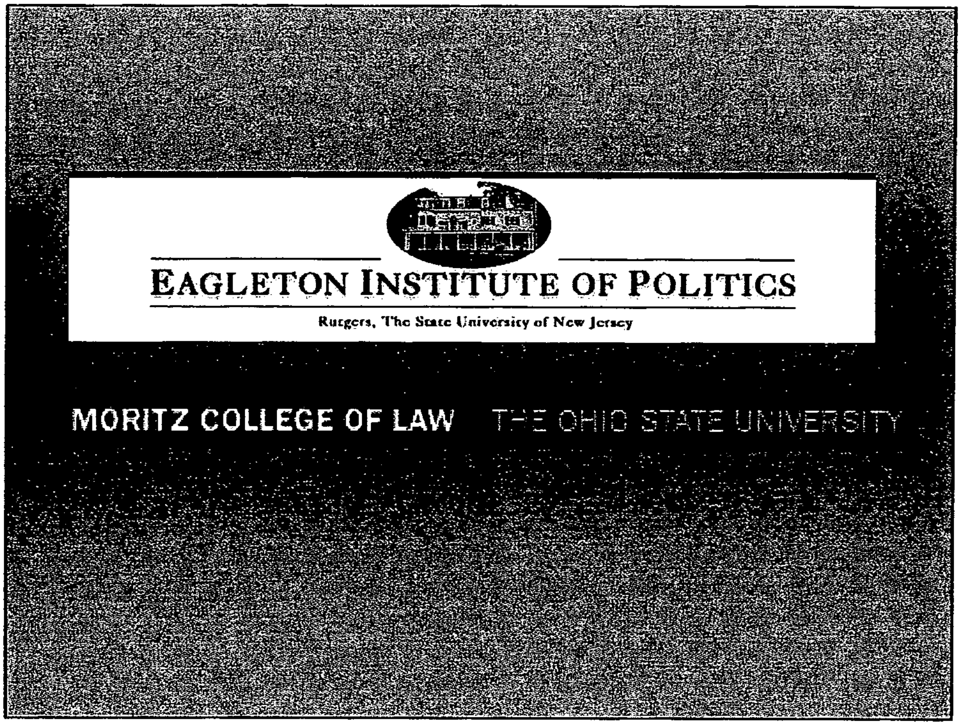
Briefing for

May 23 , 2006



Provisional Voting

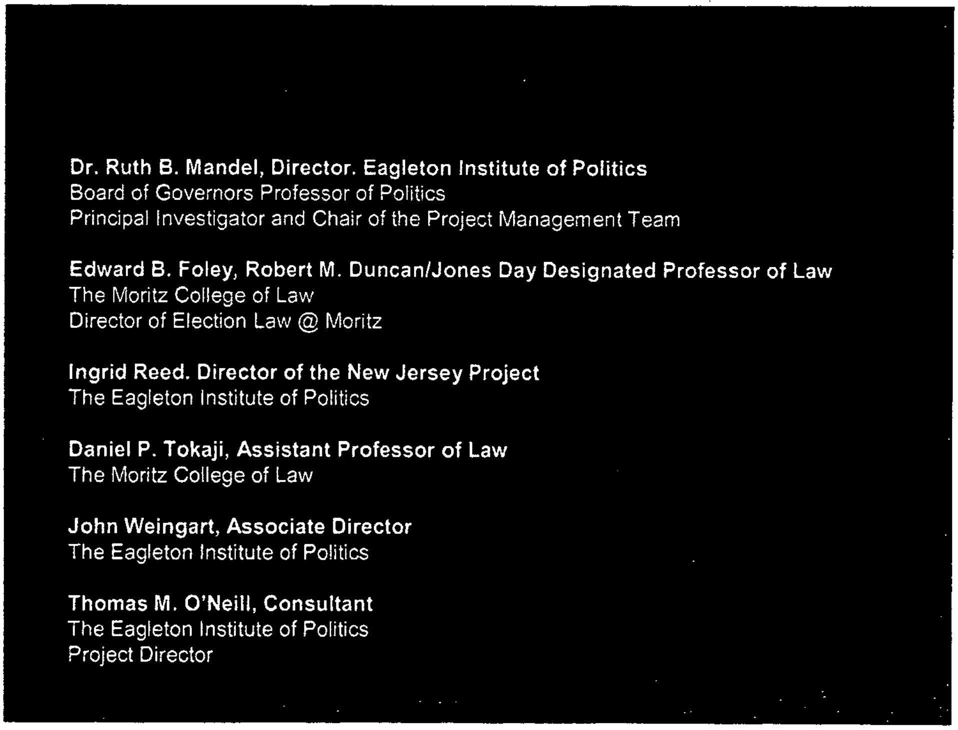
Findings and Recommendations



EAGLETON INSTITUTE OF POLITICS

Rutgers, The State University of New Jersey

MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY



Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics
Board of Governors Professor of Politics
Principal Investigator and Chair of the Project Management Team

Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law
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Ingrid Reed. Director of the New Jersey Project
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John Weingart, Associate Director
The Eagleton Institute of Politics

Thomas M. O'Neill, Consultant
The Eagleton Institute of Politics
Project Director

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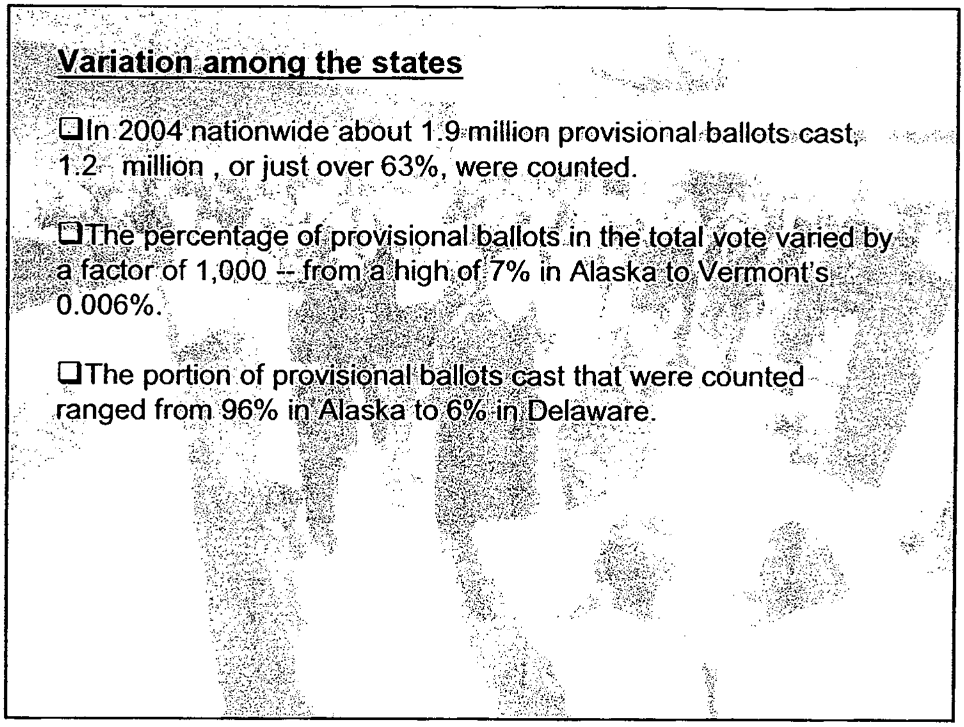

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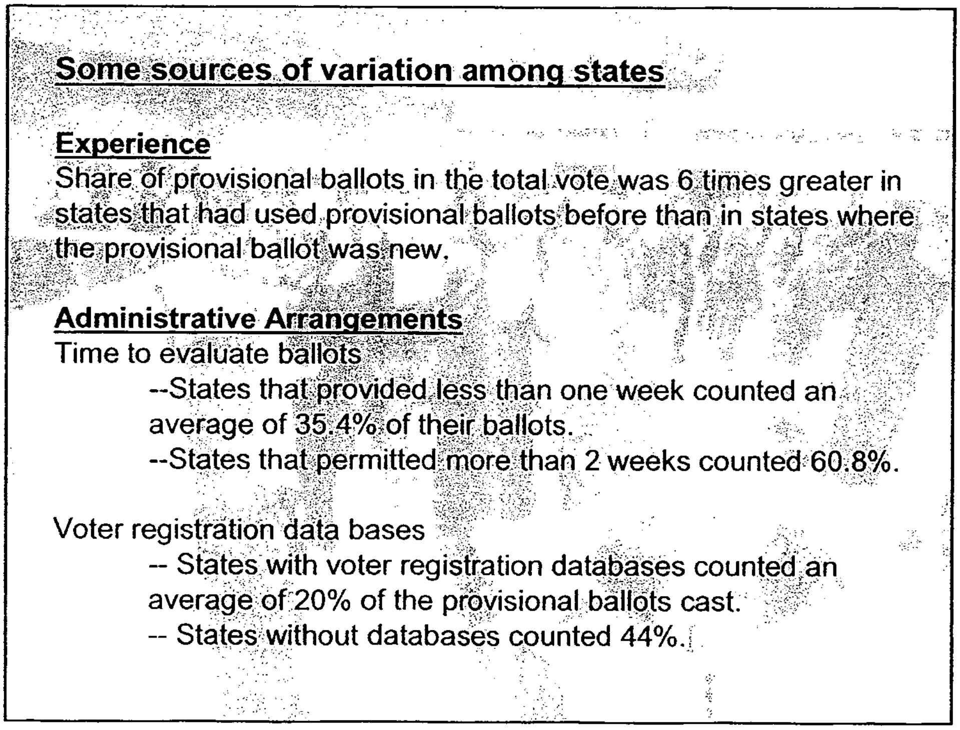

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Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied:

--The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

--Small, rural jurisdictions and large, urban jurisdictions reported higher rates of an inadequate number of poll workers.

--Jurisdictions in poor areas reported more inactive voter registrations and more provisional ballots cast.

--Richer areas had more poll workers per polling place and reported lower rates of staffing problems per precinct.

---

1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- **Only about 1 in 10 made available to poll workers a voter registration database.**
- **Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

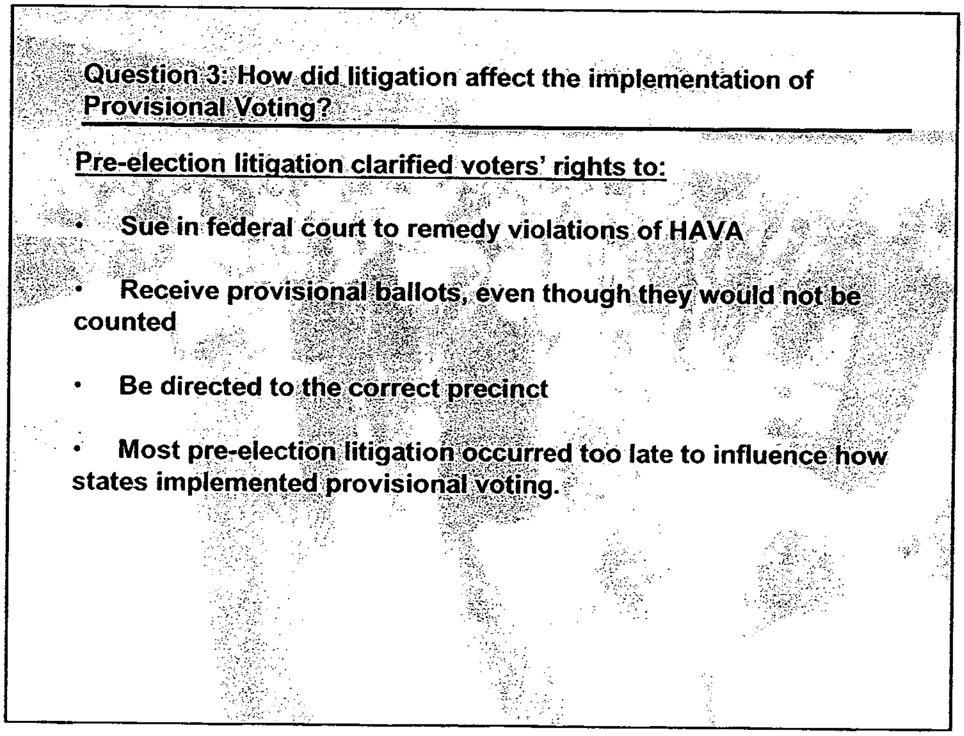
Local election officials in the "old" states felt more confident.

18 states were new to provisional voting; 25 others had experience.

"New" state officials felt:
-- Voters did not receive enough information about where to cast a provisional ballot in order to be counted.
-- More funding was needed to educate voters about their rights to cast a provisional ballot.

Provisional ballots in "old states" : more than 2% of the total vote, 4 times the proportion in "new" states.

Counting provisional ballots in the final vote, the "old" states averaged 58% nearly double the average (33%) in "new" states.



Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.

4. How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the "new" states.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

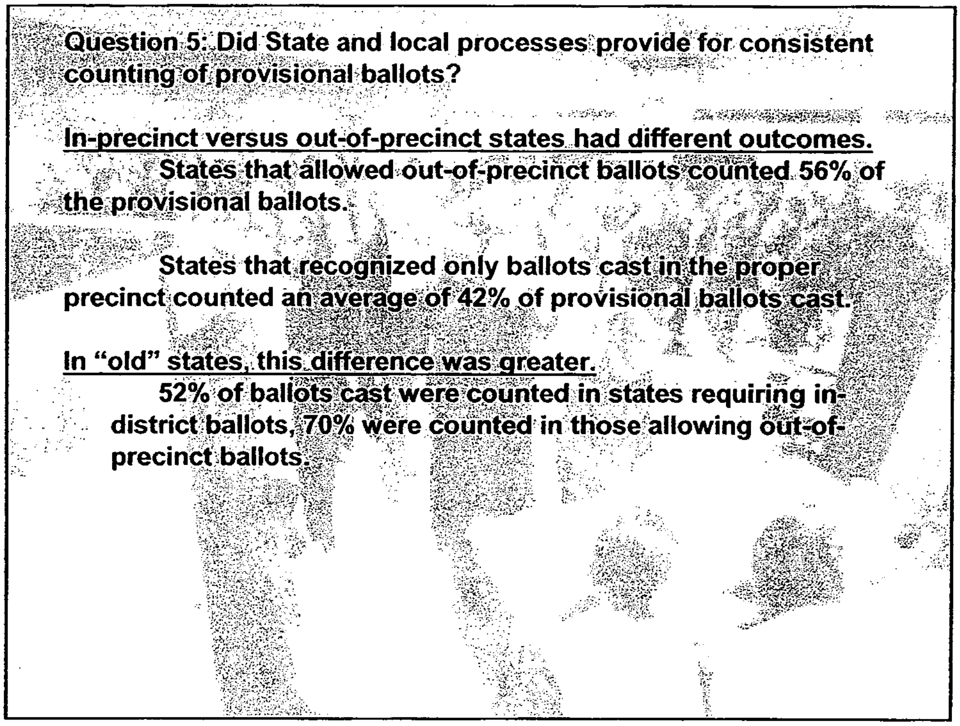
Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the state's Voter ID requirements the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).



Question 5: Did State and local processes provide for consistent counting of provisional ballots?

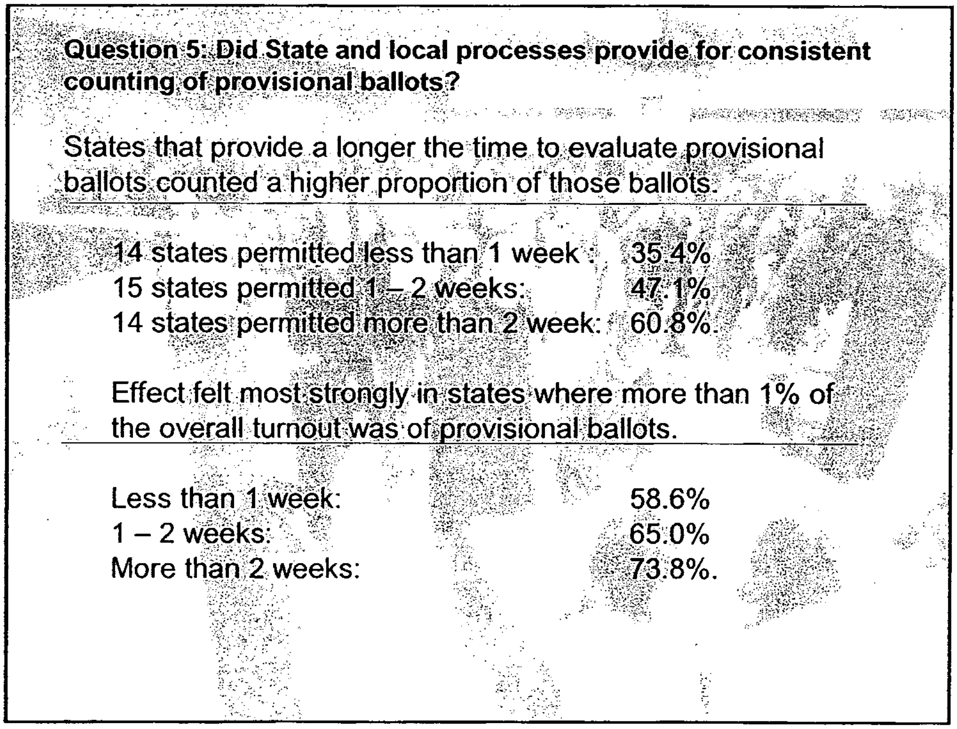
<u>In-precinct versus out-of-precinct states had different outcomes.</u>

States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

<u>In "old" states, this difference was greater.</u>

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.



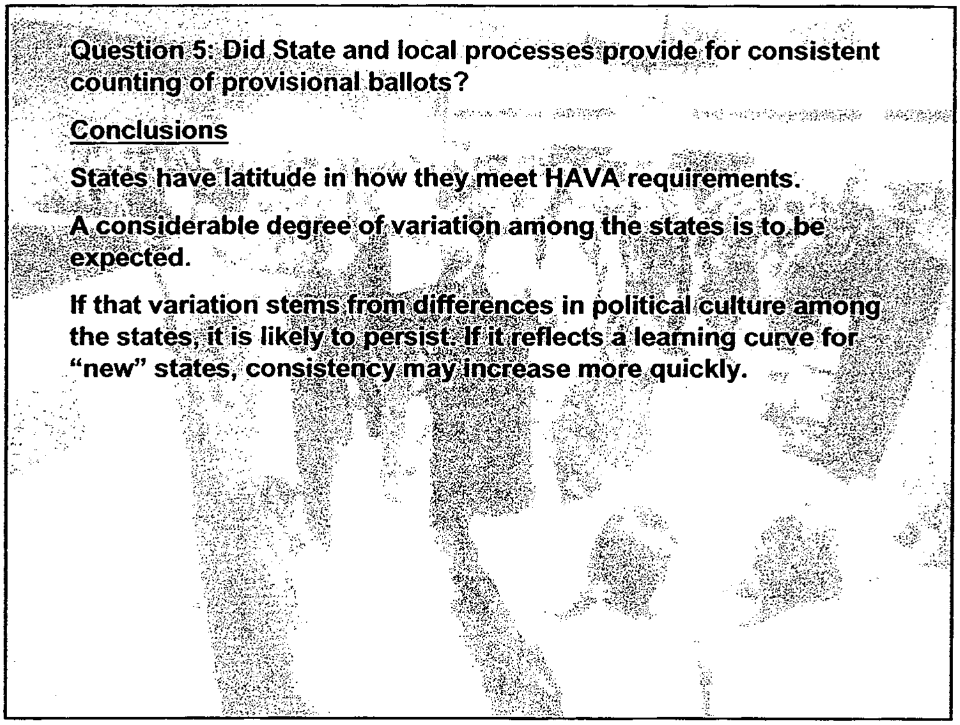
Question 5: Did State and local processes provide for consistent counting of provisional ballots?

<u>States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.</u>

14 states permitted less than 1 week :	35.4%
15 states permitted 1 – 2 weeks:	47.1%
14 states permitted more than 2 week:	60.8%.

<u>Effect felt most strongly in states where more than 1% of the overall turnout was of provisional ballots.</u>

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.



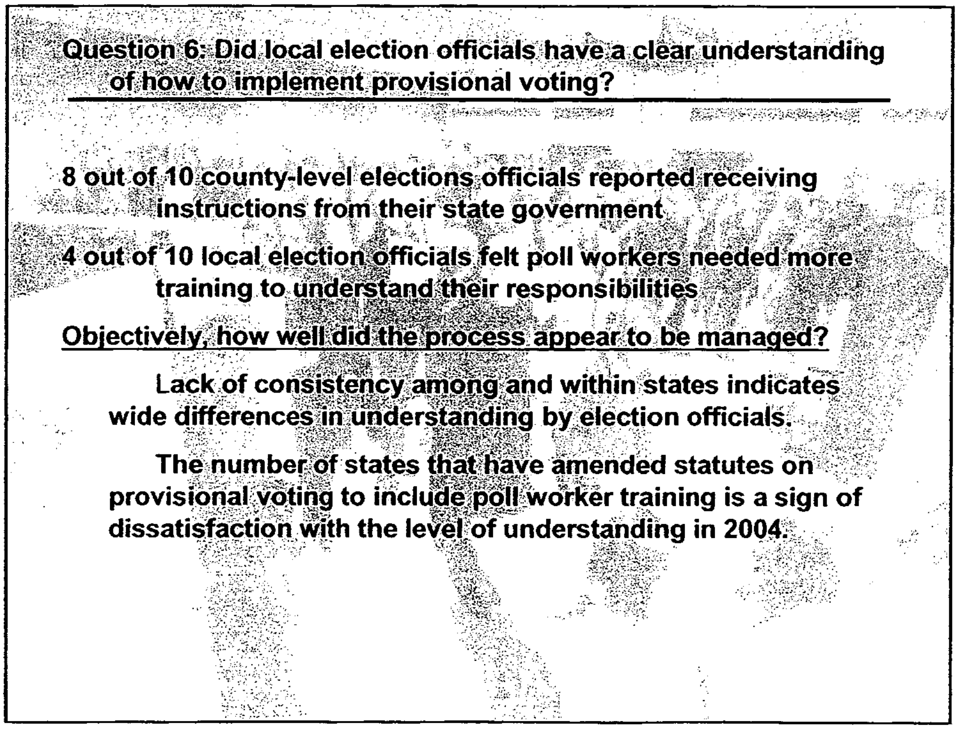
Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Conclusions

States have latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.



Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

Objectively, how well did the process appear to be managed?

Lack of consistency among and within states indicates wide differences in understanding by election officials.

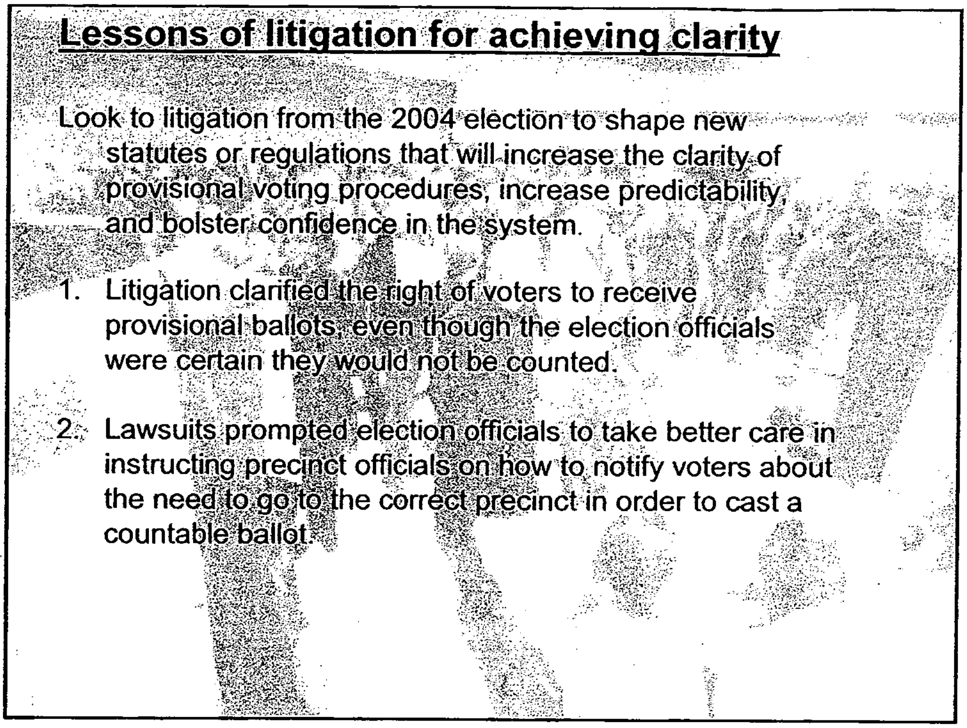
The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

BEST PRACTICES

The importance of clarity

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

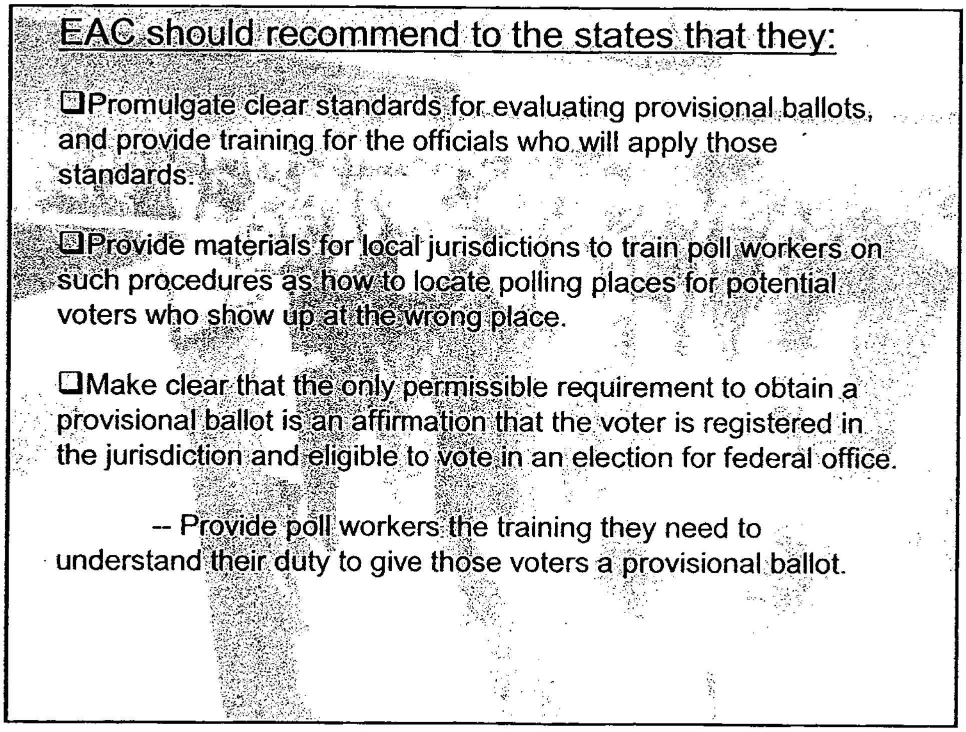


Lessons of litigation for achieving clarity

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.

2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.



EAC should recommend to the states that they:

☐Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

☐Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

☐Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

024375

EAC should recommend quality improvement

Begin a systematic quality improvement program by collecting data on the provisional voting process. Data collected should include:

- ☐Specific reasons why provisional ballots were not counted
- ☐Measures of variance among jurisdiction
- ☐Time required to evaluate ballots by jurisdiction
- ☐Provisional votes cast and counted by jurisdiction

Assess each stage of the provisional voting process

Before the election

•Clear information for voters on websites and in sample ballots.

•Training materials in every jurisdiction make poll workers familiar with the options available to voters.

At the polling place

•Design of provisional ballot

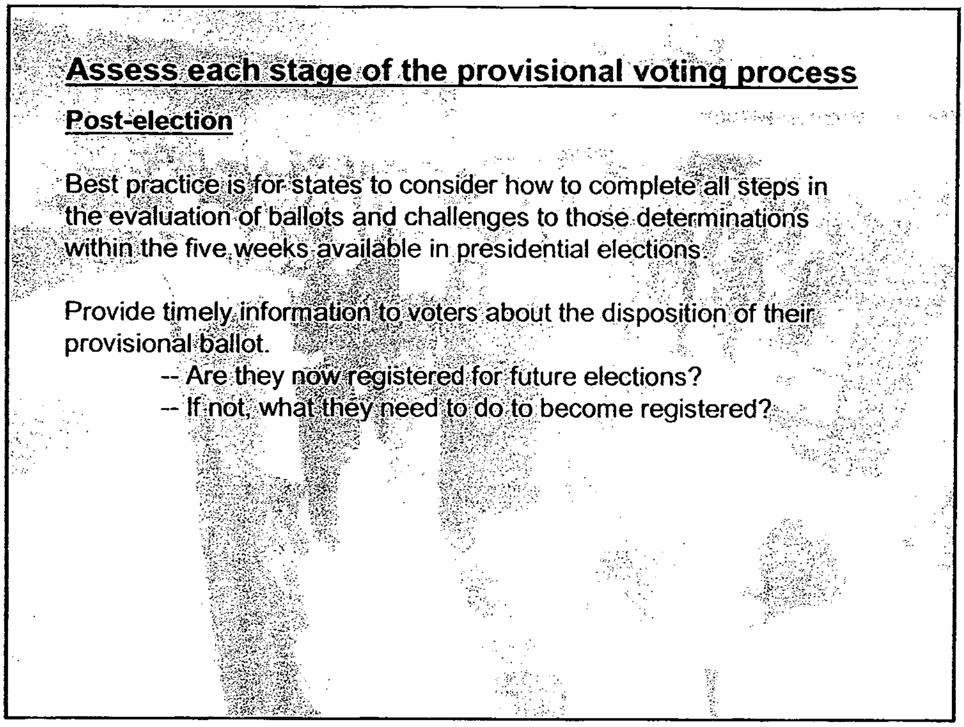
•Estimate supply of provisional ballots needed at polling places

Evaluating provisional ballots

•Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.

•A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.

•Follow written procedure or checklist to record why a provisional ballot is rejected.



Assess each stage of the provisional voting process

Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- -- Are they now registered for future elections?
- -- If not, what they need to do to become registered?

U. S. Election Assistance Commission

May 2006

"Tom O'neill"
[redacted]
05/17/2006 08:53 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Presentations at the EAC Governing Boards

History: This message has been replied to.

Karen, I'm afraid I don't have WordPerfect either. And Rutgers runs on MS Word as well. But I'll see what we can do..

Tom O'Neill

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Wednesday, May 17, 2006 5:17 PM
> **To:** [redacted]
> **Cc:** aambrogi@eac.gov; asherrill@eac.gov
> **Subject:** RE: Presentations at the EAC Governing Boards
>
> I am told that a Wordperfect copy of the Provisional document will be fine.
>
> EAC staff will convert it to a PDF file. Please sent the final drafts of the reports ASAP.
>
> Also, you are correct to note the changes in the time allotments Please divide the time among your staff as you deem appropriate.
>
> K
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
> "Tom O'neill"
> [redacted]
>
> 05/17/2006 04:57 PM
>
> To klynndyson@eac.gov
> cc tokaji.1@osu.edu, john.weingart@rutgers.edu, foley.33@osu.edu
> Subject RE: Presentations at the EAC Governing Boards

Karen, I don't have the capacity to produce a PDF copy of the report. (I thought we discussed this last week and you agreed that the word document would suffice.) Someone at Eagleton could surely covert the DOC file to PDF, but since I just read your email now (4:50), we could not provide a PDF copy today. Please let me know if you want me to pursue this tomorrow.

Thanks for the schedule below. But it raises a question. Earlier this week you told me that the Commissioners asked that we limit our presentation to 10 minutes and leave the rest of the time for questions and comments. As I noted in my response, condensing our reports to 10 minutes poses a challenge. Is the 10 minute limit no longer operative?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, May 17, 2006 12:30 PM
To: [redacted]
Cc: asherrill@eac.gov; aambrogi@eac.gov; jthompsonhodgkins@eac.gov
Subject: Re:Presentations at the EAC Governing Boards

Tom-

Look forward to getting a PDF copy of the final versions of the Voter ID paper and the Provisional Voting Paper by COB today

Here is the timing breakdown for next week's presentations:

EAC Standards Board (137 members)

Tuesday, May 23, 2006
2:30-4:00 PM
Hamilton Ballroom
Provisional Voting
45 minutes for presentation
45 minutes for questions and answers

Wednesday, May 24, 2006
1:40-2:45 PM
Hamilton Ballroom
Voter Identification

40 minutes for presentation
25 minutes for questions and answers

EAC Board of Advisors (36 members)

Wednesday, May 24, 2006
8:30-9:15 AM
Lafayette Park Ballroom
Provisional Voting
20 minutes for presentation
25 minutes questions and answers

Wednesday, May 24, 2006
11:00-11:55 PM
Lafayette Ballroom
Voter Identification
30 minutes presentation
25 minutes questions and answers

EAC General Counsel Julie Thompson- Hodgkins will facilitate/moderate all of your sessions

Will be in touch tomorrow after the Commissioners have met.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]
05/11/2006 01:09 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Thank you and moving into the home stretch

History: This message has been replied to.

Karen: You will have the Provisional Voting paper tomorrow. Tim will rework his paper and have a new version to me (using the dummy variable approach) on Monday. I will have a report that incorporates the new work (with our original approach described in an appendix) to you late Tuesday. Does that work with the Commission's schedule for review of the paper?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, May 11, 2006 12:58 PM
To: [redacted]
Cc: lreed@rutgers.edu; john.weingart@rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
Subject: Re: Thank you and moving into the home stretch

Tom et.al-

Many, many thanks to you and the staff for your active participation and support in what I found to be an extremely helpful and productive hour.

Special thanks to Tim for his openness to new approaches and to all the hard work he is doing with running these numbers (ad infinitum).

The touch questions-

1. Realistically, when should I expect your final VOTER ID paper to present to the Commissioners?
2. Can I expect your final Provisional Voting Paper by tomorrow COB?

Thanks again for your fine efforts.

K
the $ Commissioners

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]
05/10/2006 10:12 AM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, tokaji.1@osu.edu, foley.33@osu.edu, "Tim Vercellotti" <tim.vercellotti@rutgers.edu>
bcc
Subject RE: Travel arrangement for the EAC Board of Advisors and Standards Board meeting

History: This message has been replied to.

Karen,

As we discussed last week, the Eagleton-Moritz team making the presentations at the advisory board meetings will include others in addition to Ned and me. While Ned and I will handle the briefing on the provisional voting report, the team for the briefing on the Voter ID report will include Dan Tokaji and Tim Vercellotti.

Just to understand what Adventure Travel is to provide: will its services include hotel reservations and travel, or does it have a more limited mission?

Thanks,

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, May 09, 2006 4:34 PM
To: klynndyson@eac.gov
Cc: john.weingart@rutgers.edu; Tom O'neill
Subject: Re:Travel arrangement for the EAC Board of Advisors and Standards Board meeting

Tom O' Neill and Ned Foley-

As you know you are scheduled to make two presentations to the EAC Board of Advisors and Standards Board on **Tuesday May 23, 2006 from 2:30-4:00 PM (on Provisional Voting) and on Wednesday ,May 24th from 1:40-2:45 PM (on Voter Identification)**

If you have not already done so, please make your hotel and travel arrangements through Adventure Travel, Judy Mays 205-444-4833 ([redacted]

These reservations should be made no later than tomorrow COB.

Please indicate to Judy Mays that you are a contractor, who is scheduled to make a presentation at the meeting.

Thanks

Karen Lynn-Dyson

Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]
05/09/2006 10:19 AM

To klynndyson@eac.gov
cc
bcc
Subject RE: Voter ID Report and Appendices

Thanks, Karen. I received both your emails and also had a telephone conversation with Aletha Barrington to fill me in on the details.

Also participating in the conference call on Thursday will be 3 members of our Peer Review Group: Mike Alvarez, Martha Kropf, and Tim O'Rourke.

The Eagleton-Moritz team on the call will include: John Weingart, Dan Tokaji, Tim Vercellotti, Ingrid Reed, and me.

I'm assuming you will guide the conversation and keep us all on time and topic.

Thanks for the schedule with the details of the EAC's review of our work.

Tom O'Neill

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Tuesday, May 09, 2006 10:05 AM
> **To:** [redacted]
> **Cc:** john.weingart@rutgers.edu; tokaji.1@osu.edu
> **Subject:** Re: Voter ID Report and Appendices
>
> Thanks, Tom.
>
> Assume you just got the e-mail I sent to the EAC review team that included the paper, the analysis and the call-in information
>
> **Thursday at 11:30**
> **1-866-222-9044**
> **Passcode 62209#**
>
> A few items on timelines and materials for May 23-24 meetings:
>
> The Commissioners will review the final Eagleton Voter ID and Provisional Voting reports at their Tuesday, May 16 meeting. At this meeting they will decide how they wish to present these reports to the EAC Board of Advisors and Standards Boards.
>
> Your materials that will be distributed to the EAC Board of Advisors and Standards Boards must be finalized and ready for our Xeroxing process by **Thursday, May 18**. I will be in touch along the way to provide input/guidance on what these materials should be, based on the Commissioner's review and decisions

Regards-

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Adam Berinsky" <berinsky@MIT.EDU>
05/03/2006 04:05 PM

To klynndyson@eac.gov
cc
bcc
Subject Re: Review of EAC research on Voter Identification

History: This message has been replied to.

hello:

I just got your message by phone:

It would be best to send it to my home address:

61 Clay Street
Cambridge, MA 02140

Also, in your original phone message you said that there would be an honorarium associated with the review process, but this e-mail states that there will be no compensation for the review. I of course did not expect to be compensated at my market rate for consulting jobs (which is $225 an hour) but I was led to believe that I would be compensated in some manner for my time.

best

adam berinsky

At 05:36 PM 5/1/2006, you wrote:

> Dr. Berinsky-
>
> On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paperâ€™s findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:
>
> ℜ• The research methodology which was used to support the paperâ€™s conclusions
>
> ℜ• The specific statistical applications which were used to analyze the data and arrive at various conclusions
>
> If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagletonâ€™s peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EACâ€™s Board of Advisors and Standards Boards in late May.

While we are unable to offer financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Adam J. Berinsky
Associate Professor
Department of Political Science
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139 E53-459
Tel: (617) 253-8190
Fax: (617) 258-6164
E-mail: berinsky@mit.edu
Web Page: http://web.mit.edu/berinsky/www/

Thomas R. Wilkey/EAC/GOV
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc
bcc
Subject Re: E-mail to Voter ID peer reviewers

History: This message has been replied to.

Did we resolve the contact issues on this?

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 02:58 PM
To: Thomas Wilkey; Juliet Thompson-Hodgkins
Subject: E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV
04/28/2006 01:23 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Voter ID Paper --Final Draft

History: This message has been replied to.

How much of an honorarium and how fast do we get their review.

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 04/28/2006 01:13 PM
To: Thomas Wilkey
Subject: Re: Voter ID Paper --Final Draft

Tom-

You'll recall that we discussed the fact that the peer review group who Eagleton has assembled do not have the sufficient technical expertise to give us the expert/technical advice we need on the statistical analysis of the Voter ID piece. Only two persons on Eagleton's peer review group have a requisite research and statistical background
and knowledge.

You may also remember that Mike told me that he thought that the paper needed an additional set of eyes and review by academics with a background and expertise in election statistics and analysis. When I initially proposed a review panel of six you said that was too many; we agreed that I would find three persons to do the review and that we would pay them a small honoraria for doing the review.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV
04/28/2006 02:07 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Voter ID Paper --Final Draft

History: This message has been replied to.

Sorry I could have told her what a pain her Mother is.
You are right..that will tell us if the data is totatly unreliable

----
Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 04/28/2006 02:00 PM
To: Thomas Wilkey
Subject: Re: Voter ID Paper --Final Draft

If we get that many varying opinions from such experts, probably says this work is too controversial to take to a level of serious public review and discussion. That would be a good thing to know, and would save us the embarrassment, I think.

Get some rest. You missed my daughter yesterday- I wanted her to meet my boss.

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV
04/28/2006 12:50 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Voter ID Paper --Final Draft

History: This message has been replied to and forwarded.

Karen,
Was this part of the contract. I thought their was a peer review group in place,

----

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 04/28/2006 12:44 PM
To: Tom O'neill" [redacted]
Cc: arapp@rci.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti" <tim.vercellotti@rutgers.edu>; tokaji.1@osu.edu
Subject: Re: Voter ID Paper --Final Draft

Tim, Tom, John, et.al--

The EAC has identified three academics who are going to serve as peer reviewers of the Eagleton Voter ID paper and research.

They are Jonathan Nagler of New York University, Jan Leighley, University of Arizona, and Adam Berinsky of MIT.
They are ready to review the documents as soon as they are available.

I would like to them one week to review the material and then have a joint conference call on **Thursday, May 11**, in which we would all have an opportunity to discuss the research methodology and statistical analysis, along with general comments and suggestions.

If you are able to get to me the paper and the supporting data analysis, I will distribute to the documents ASAP.
Also let me know, if you would, your availability on May 11 to do this conference all.

I anticipate that it will last approximately 90 minutes.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Adam Berinsky"
<berinsky@MIT.EDU>
04/28/2006 09:57 AM

To klynndyson@eac.gov
cc
bcc
Subject your call

History: This message has been replied to.

Hello: I just got your message (I'm on leave this year and not in the office much). I would be interested in doing the review, depending on the date of the conference call. As long as it is not on a Tuesday, I could do it.

best

adam berinsky

Adam J. Berinsky
Associate Professor
Department of Political Science
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139 E53-459
Tel: (617) 253-8190
Fax: (617) 258-6164
E-mail: berinsky@mit.edu
Web Page: http://web.mit.edu/berinsky/www/

Thomas R. Wilkey/EAC/GOV
04/27/2006 03:50 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Schedule for completion of Prov. Voting and Voter ID research

I think we need to get their final documents to the Commissioners prior to review by both the Boards. You see the politics here and evryone wants to make sure their comments were taken care of before they go to these two boards...as to the June public meeting Julie , you and I need to discuss.
Let's chat tomorrow sometime when I get a spare minute.
Thanks

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 04/27/2006 09:10 AM
To: Juliet Thompson-Hodgkins
Cc: Thomas Wilkey
Subject: Re: Schedule for completion of Prov. Voting and Voter ID research

I think that a number of months ago we envisioned the Eagleton project culminating with a presentation of both of the papers at a public meeting. We had tentatively scheduled that presentation for the June public meeting. Also, we must provide for a review of these studies to EAC's Standards Board and Board of Advisors.

Clearly, plans have changed although we need to figure out how we have Eagleton present its final papers on Provisional Voting (already planned)and Voter Identification (still in process) to the EAC Standards and Advisory Boards.

Look forward to your suggestions on how best to proceed with wrapping up these two efforts.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Mike Alvarez"
<rma@hss.caltech.edu>
04/07/2006 12:54 AM

To klynndyson@eac.gov
cc
bcc
Subject Re:

History: This message has been replied to.

Glad to help. I don't want to step on toes, but I'd recommend that you think about some sort of single-blind peer review, of the sort that is employed by many research journals and other organizations (like the NSF or National Academies of Science). I think that if you offer them a modest honoraria (perhaps $100) I think you'll find that the folks on that list would be likely to provide quick and thorough feedback to you.

Again, let me know if there is more that I can do to help.

I'm also willing to do a review for you myself. The issue is that I feel somewhat conflicted, given that I'm on their "peer review" panel. But on the other hand that does mean that I'm very well aware of the background of this project. I'd leave it up to you as to whether you think that a review from me would be appropriate or not.

Mike

On Thu, 6 Apr 2006 klynndyson@eac.gov wrote:

> Mike- Nice to finally meet you in person, as well. Indeed ,as discussed,
> I am likely to confer with your peers on a number of matters related to
> research methodology and statistical analyses,
>
> Thanks again for providing these names.
>
>
> K
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
>
>
>
> "Mike Alvarez" <rma@hss.caltech.edu>
> 04/05/2006 07:39 PM
>
> To
> klynndyson@eac.gov
> cc
>
> Subject

>
>
>
>
>
>
>
> Hi -- nice to meet you in person, finally!
>
> And thanks for inviting me to your gathering, I enjoyed
> it and hope I was helpful. Of course, any time you want
> anything, you do know where to track me down.
>
> As to the potential reviewers of the Eagleton Voter ID
> study, here are my suggestions, in order:
> Jonathan Nagler, New York University
> Jan Leighley, University of Arizona
> Ben Highton, UC-Davis
> Adam Berinsky, MIT
> Bernard Grofman, UC-Irvine
>
> All have worked with the CPS turnout/registration data, and
> are very familiar with this research literature.
>
> If these don't work, or you want more recommendations, let me know.
>
>

--
****
R. Michael Alvarez (O)
626-395-4089
Professor of Political Science (F)
626-405-9841
Caltech/MIT Voting Technology Project
California Institute of Technology
Pasadena, CA 91125
rma@hss.caltech.edu

Contributor to Election Updates,
http://electionupdates.caltech.edu/blog.html
****

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to The EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
JULY 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

August 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.4
- Voter Identification Requirements
    - Task 3.10
    - Task 3.11
- Project Management
    - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from July 1 through July 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The effort this month continued to focus on research for the analysis and alternatives paper, including the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states. We also prepared and delivered testimony at the EAC's regular monthly meeting in Pasadena on July 28.

The data collection, analysis, and compilation are all on schedule. Because of delays in agreeing on the composition of the Peer Review Group with EAC, however, the actual completion and submission of the analysis and alternatives paper to the EAC will most likely be delayed about a week beyond the target date in the work plan. We are scheduled to discuss the draft paper and guidance document prior to submission, with the EAC on September 6, and the final draft cannot be completed until several days after that date.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: tom_oneill@verizon.net or (908) 794-1030.

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed this month.

Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting.

Progress: The 50-state (plus District of Columbia) chart created to collect data on provisional voting is complete. We have collected the statutes for all states. State by state summaries of provisional voting have been written for 47 states and D.C. A memorandum summarizing provisional voting litigation is complete. The collection of the documents associated with the litigation is nearing completion.

Challenges: The variety in the form of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The remaining 3 state summaries of provisional voting will be completed by August 8. Analysis of all the information, data, and survey results concerning provisional voting data will be performed in August.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. At the end of July the survey of 400 local election officials was nearing its end, and – as of this writing – is now complete with an analysis and report in draft form. We will rely on the survey results to improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

PROVISIONAL VOTING NARRATIVES

Description: To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

Progress: The state-by-state database is complete, as is a first draft of all state narratives. This work has been shared with the larger team and is being reviewed currently in preparation for constructing analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

Work Plan: In the next month, revisions of the narratives will be complete. In addition to this research, we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms.

SURVEY OF COUNTY ELECTION OFFICIALS

Description: The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting. The survey was designed to determine the following factors related to provisional voting at the county (or equivalent election jurisdiction) level:

- The content and quality of instructions provided to county officials by the states;
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting.

Progress: The fielding and initial analysis of the survey results are complete.

Work Plan: The information derived from the survey will be considered in drafting the analysis and alternatives document required under Task 3.5.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have completed tasks 3.10 and 3.11. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: The chart created to collect data on voter identification is complete and is now being reviewed. Voter identification statutes are being collected.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Work Plan: Review of the voter identification chart, the collection of the voter identification statutes, and the writing of the state by state summaries will be completed by the end of August.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of voter ID requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

Progress: The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. It also contains exit poll data from the 50 states, providing demographic data of voter turnout. The analysis of that data is well underway.

Challenges: The initial methodology that was devised to investigate the questions involved in this part of the study proved insufficient, as the necessary data was unobtainable (the Census Bureau has not yet released their 2004 data). After re-developing an appropriate methodology, the necessary data has been assembled, we have resumed the analysis of this data.

Projection: The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-August.

Task 3.11 Public meeting on Voter Identification Requirements

Description: In early July, we continued our efforts to identify specific Voter ID topics or issues and panelists who could shed light on them. We recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we recommended that one panel include specific legislators on opposite sides of the issue from two different states, Mississippi and Wisconsin. We also discussed adding a researcher to the panel in order to place the debate in a national or historical context. We also recommended a panel of two academic researchers with contrasting points of view, to address the effects of Voter ID provisions under HAVA. In response to our suggestions, EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA.

By mid-July, the EAC had decided which topics and speakers should be invited, however most of those speakers proved unable to attend.

Progress: Tom O'Neill and Dan Tokaji attended the EAC Public Meeting held in Pasadena on July 28. Their presentations at the meeting described the progress of the research and our developing perspective on how to assess the quality of the provisional voting process in the states and identify possible steps for improvement.

Challenges: The changes in the scheduling of the July meeting delayed and ultimately made it impossible to assemble a panel, from which we could derive substantive insight into voter identification issues as they are playing out in the states. Additionally, due to the date of the hearing, the information from the hearing was not available as early in the research process as contemplated in the contract.

Projection: Preparation of the hearing summary will likely be delayed, due to the team's focus on preparation of the analysis and alternatives paper.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

Progress: Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded that as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations might be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to the EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We provided an analysis of the cost and time involved in adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. In the end, the EAC determined that Eagleton should appoint a balanced Peer Review Group of its own choosing. Initial phone calls were made to all members of that group by the end of July, and written invitations and descriptions of the process have gone to all possible members who had indicated their interest in serving.

Challenges: Communications on this issue with the EAC were not clear or timely. The purpose of the PRG is to review our work, and to comment on our research design, which is well underway. We had planned to have the PRG in place early enough in the project to enable them to provide feedback, including the research design. While we are confident in the quality of our work, the experience and perspective of the Peer Review Group will strengthen our analysis and recommendations as we find a way to receive its critique in the more limited time now available. The delay in creating the Peer Review Group will result in a delay in the completion of the final draft of the analysis and alternatives paper and in the preliminary guidance document.

Projections: The work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: The Moritz team has provided Eagleton staff with all completed work. An Eagleton staff member reviews the content and formats of data from all supporting research and will (re-)format once the work has been completed for the compendium and reports submitted to the EAC. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

Projections: By the end of July 2005, much of the above referenced research has been completed. The entire project team has begun the process of reviewing all work, and will combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

Progress: Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV

08/15/2005 04:57 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: Eagleton Institute of Politics - July 2005 - Monthly Progress Report

Hey-

When you get a chance- please confirm with the Eagleton team, the date and time they are coming to meet with EAC staff (Tom, Julie, Karen, Adam,others?) in early Sept.

Thanks

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 08/14/2005 04:55 PM -----

"Lauren Vincelli"
<Vincelli@rutgers.edu>

08/15/2005 03:01 PM

Please respond to
Vincelli@rutgers.edu

To klynndyson@eac.gov
cc "'Tom O'neill'" [redacted], rmandel@rci.rutgers.edu, john.weingart@rutgers.edu
Subject Eagleton Institute of Politics - July 2005 - Monthly Progress Report

Ms. Dyson,

Attached please find the July 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please contact Tom O'Neill at: [redacted]

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,
Lauren Vincelli

Lauren Vincelli

Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551

ProgressReport_JULY2005_EagletonInst.pdf

Karen Lynn-Dyson/EAC/GOV
08/19/2005 03:41 PM

To "Tom O'neill" [redacted]
cc
bcc Paul DeGregorio/EAC/GOV@EAC; Thomas R. Wilkey/EAC/GOV@EAC; Raymundo Martinez/EAC/GOV@EAC; Gracia Hillman/EAC/GOV@EAC; Amie J. Sherrill/EAC/GOV@EAC; Adam Ambrogi/EAC/GOV@EAC; Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
Subject Re: Peer Review Group

Tom-

Thank you for sharing this list of your Peer Review Group members, to-date. I will share this list with the Commissioners and will be certain to let your know of their feedback, if any.

I will also be back in touch regarding Eagleton's research around voter fraud and the research project EAC will be undertaking,this fall, around voting fraud and voter intimidation. The EAC is presently in the process of finalizing a work and staff plan for this project and once it is completed, I will be certain to brief you on it.

In the meantime, EAC staff and several of the Commissioners looks forward to meeting with the Eagleton/Moritz team on September 6 at 1:30 PM.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

"Tom O'neill"
[redacted]
08/19/2005 02:20 PM

To klynndyson@eac.gov
cc
Subject Peer Review Group

Karen,

Attached is a report on the status of recruitment of members of the Peer Review Group. We extended 9 invitations. We have four confirmed members, one reluctant turn-down, one who has yet to respond to an initial inquiry, and are awaiting confirmation from 3 others who initially agreed. Please let me know if you need additional information.

Tom O'Neill

RecruitmentStatus.doc

STATUS OF PEER REVIEW GROUP RECRUITMENT

(As of August 17, 2005)

R. Michael Alvarez, Ph.D. Professor of Political Science California Institute of Technology	**YES/CONFIRMED**
Guy-Uriel Charles Associate Professor, School of Law University of Minnesota [redacted]	**YES***
Brad Clark Professor of Law George Washington University School of Law	**NO**
Pamela Susan Karlan Montgomery Professor of Public Interest Law Stanford Law School [redacted]	**YES**
Martha E. Kropf, Ph.D. Assistant Professor of Political Science University of Missouri-Kansas City 816-235-5948; KropfM@umkc.edu	**YES/CONFIRMED**
Daniel H. Lowenstein Professor of Law UCLA [redacted]	**YES**
John F. Manning Professor Harvard Law School	**NO RESPONSE**
Tim Storey Program Principal Legislative Management Program National Conference of State Legislatures	**YES/CONFIRMED**
Peter G. Verniero, Esq. Counsel Sills, Cummis, Epstein and Gross, PC (Former NJ Attorney General and Supreme Court Justice)	**YES/CONFIRMED**

Deliberative Process Privilege

Karen Lynn-Dyson/EAC/GOV
09/14/2005 02:16 PM

To Amie J. Sherrill/EAC/GOV@EAC
cc
bcc
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

Eagleton Institute request for input from the Commissioners on Alternative Next Steps.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Amie J. Sherrill/EAC/GOV

Amie J. Sherrill/EAC/GOV
09/14/2005 02:14 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

Will do. What topic do you want me to use on the agenda?

Amie J. Sherrill
Special Assistant to Vice Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
09/14/2005 02:12 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

So, Aimee, guess you should put copies in the 4C's packets.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
09/14/2005 02:02 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

Yes

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
09/14/2005 12:53 PM

To Amie J. Sherrill/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
cc
Subject Item for tomorrow- Eagleton's request for 4C's input on Alternative Next Steps

Tom-

Do you want this as an agenda item?

Aimee-

Will leave a copy of the document on top of your desk.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

09/22/2005 01:21 PM

To Gavin S. Gilmour/EAC/GOV@EAC

cc

bcc

Subject Fw: SOW for voting fraud consultants

Gavin-

This should give you an idea of what the consultants will be doing for the EAC.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/21/2005 01:19 PM -----

Carol A. Paquette/EAC/GOV

09/21/2005 07:45 PM

To klynndyson@eac.gov@EAC

cc

Subject SOW for voting fraud consultants

Karen -

Did some tightening up on language in this SOW. Let me know if you have any changes you want to make ASAP so this can go in for contract processing tomorrow. Thanks!

Wang consulting contract.doc

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

EAC CONTRACT #05-66 Consulting Services to Assist EAC in the Development of a Voting Fraud and Voter Intimidation Project

Background

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

Due to the unavailability of internal staff, EAC needs to obtain consulting services to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below and produce the required deliverables.

Tasks

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections. Submit this description to the EAC for review and approval.

2. Using the description developed in Task 1, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.

3. In consultation with EAC, identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. Provide the Working Group with the results of Tasks 1 and 2 as background information. Develop a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.

4. Prepare a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future research resulting from this effort.

5. Should the EAC decide to pursue one or more of the Task 4 recommendations, Consultant shall define appropriate project scope(s) and prepare Statement(s) of Work sufficient to issue for competitive procurement.

Special Considerations

Work for Hire. The services performed under the terms of this agreement are considered " work for hire," and any intellectual property or deliverables, including but not limited to research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

Acceptance of Work Product. The EAC Project Manager for this effort is Karen Lynn-Dyson, EAC Research Manager, who will review and approve all work.

Period of Performance and Compensation

The period of performance for this contract is six months, with a fixed price ceiling of $50,000 for labor. The Consultant is expected to work at least 450 hours during this period. The EAC suggests that these hours be distributed evenly over the period so that the Consultant is working approximately 20 hours per week. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, if required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A total of $5,000 has been allocated for reimbursement for travel and other allowable expenses.

Invoicing

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

Contract Termination

This contract can be terminated in advance of the current end date by two weeks' notice in writing by either of the parties.

Deliverables and Timetable

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD

Karen Lynn-Dyson/EAC/GOV

09/23/2005 05:20 PM

To Raymundo Martinez/EAC/GOV@EAC

cc Adam Ambrogi/EAC/GOV@EAC

bcc

Subject Reminder: To review the Eagleton draft guidance so that you can lead Monday's Commissioner discussion

Have a great weekend!

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
09/27/2005 03:40 PM

To Vincelli@rutgers.edu, Juliet E. Thompson/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Thomas R.
cc arapp@rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu, ireed@rutgers.edu, [redacted]
bcc
Subject Re: EAC Conference Call - Friday 9/30

Eagleton/Moritz team-

I'd leek to propose a conference call with EAC Commissioner Martinez, General Counsel ,Julie Thompson, Research Manager Karen Lynn-Dyson and your team for either **10:30 or 1:30 on Friday, September 30**.

This will be to discuss the draft guidance and final report you will be producing for the EAC.

Please let me know which time works for you

Regards
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
09/27/2005 04:49 PM

To john.weingart@rutgers.edu
cc aambrogi@eac.gov, arapp@rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu, ireed@rutgers.edu,[redacted]
bcc
Subject Re: EAC Conference Call - Friday 9/30

Excellent-

Friday at 1:30 it is.

Please do let the EAC staff know what number to call. Ray Martinez and Tom Wilkey may be calling from the road. Julie Thompson and I will be here.

Thanks, again

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
09/27/2005 03:56 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov, rmartinez@eac.gov, twilkey@eac.gov, arapp@rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu, ireed@rutgers.edu,[redacted]
joharris@eden.rutgers[redacted],
rmandel@rci.rutgers.edu, s[redacted],
tokaji.1@osu.edu, "'Tom O'Neill'"[redacted]t>,
vincelli@rci.rutgers.edu, williams.285@osu.edu
Subject Re: EAC Conference Call - Friday 9/30

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Karen - Let's do it on Friday at 1:30. From my initial polling, at least
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be at the same location, would you like us to initiate a conference call
from here and give you a number to call in to?

-- John Weingart, Associate Director
   Eagleton Institute of Politics
   (732)932-9384, x.290


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```

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> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

09/28/2005 01:28 PM

To Raymundo Martinez/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC

cc Adam Ambrogi/EAC/GOV@EAC

bcc

Subject Getting together today or tomorrow at 4:00

I've had a chance to go over, more thoroughly,the Eaglteon study and findings and think it would be helpful for you all to take a special look at the research that was done related to provisional case law.

Shall we get together for about an hour or so today or tomorrow, so that you all can look through this material? This would be in preparation for Friday's call with Eagleton.

Thanks

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
09/28/2005 04:11 PM

To john.weingart@rutgers.edu, Raymundo Martinez/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Adam
cc
bcc
Subject Re: EAC Conference Call - Friday 9/30

Thanks for passing on the call-in information. We look forward to speaking with the team then.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart" <john.weingart@rutgers.edu>
09/28/2005 04:01 PM
Please respond to john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
Subject Re: EAC Conference Call - Friday 9/30

Karen - For our conference call this Friday at 1:30, participants should dial (877) 805-0964 and then when prompted enter: 869580#. Could you relay this information to Commissioner Martinez and the others from the EAC who will be on the call. At our end will be Tom O'Neill, Ingrid Reed and me.

Thanks, John

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(732)932-9384, x.290

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> Please respond to
> john.weingart@rutgers.edu
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> To
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> ireed@rutgers.edu, iwreed@aol.com, joharris@eden.rutgers.edu,
> [redacted], rmandel@rci.rutgers.edu, sampson.8@osu.edu,
> tokaji.1@osu.edu, "'Tom O'Neill'" [redacted],
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> > Washington, DC 20005
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>
>
>

Karen Lynn-Dyson/EAC/GOV
09/29/2005 02:42 PM

To Raymundo Martinez/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC
cc
bcc
Subject Fw: EAC Conference Call - Friday 9/30

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/28/2005 02:41 PM -----

"John Weingart"
<john.weingart@rutgers.edu>
09/28/2005 04:01 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
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> lauracw@columbus.rr.com, rmandel@rci.rutgers.edu, sampson.8@osu.edu,
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> > Washington, DC 20005
> > tel:202-566-3123
>
>
>

Karen Lynn-Dyson/EAC/GOV

10/05/2005 11:43 AM

To Devon E. Romig/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: SOW for voting fraud consultants

Devon-

Here is one of the voting fraud SOW. Check with Carol to be certain this is the final SOW.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/04/2005 11:35 AM -----

Karen Lynn-Dyson/EAC/GOV

09/22/2005 01:20 PM

To carol paquette
cc
Subject Fw: SOW for voting fraud consultants

These changes are fine with me.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/21/2005 01:18 PM -----

Carol A. Paquette/EAC/GOV

09/21/2005 07:45 PM

To klynndyson@eac.gov@EAC
cc
Subject SOW for voting fraud consultants

Karen -

Did some tightening up on language in this SOW. Let me know if you have any changes you want to make ASAP so this can go in for contract processing tomorrow. Thanks!

Wang consulting contract.doc

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV
10/05/2005 11:55 AM

To Carol A. Paquette/EAC/GOV@EAC
cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
bcc
Subject Re: Fw: October 14th Meeting at EAC

Nicole-

Indeed, it is appropriate for Eagleton to bring three persons; I have asked them to bring their survey expert, their case law person and their project director.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Carol A. Paquette/EAC/GOV

Carol A. Paquette/EAC/GOV
10/05/2005 10:57 AM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
cc klynndyson@eac.gov@EAC
Subject Re: Fw: October 14th Meeting at EAC

Nicole -

You need to coordinate these questions with Karen. This is her meeting. I do not know the objectives or purpose, nor have I seen an agenda. So I cannot begin to know how many or who should attend from any given project.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
Nicole Mortellito/CONTRACTOR/EAC/GOV

Nicole Mortellito/CONTRACTOR/EAC/GOV
10/05/2005 10:37 AM

To Carol A. Paquette/EAC/GOV@EAC
cc
Subject Fw: October 14th Meeting at EAC

Carol: your thoughts on this?

----- Forwarded by Nicole Mortellito/CONTRACTOR/EAC/GOV on 10/05/2005 10:36 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
10/05/2005 10:07 AM

Please respond to
john.weingart@rutgers.edu

To nmortellito@eac.gov
cc
Subject Re: October 14th Meeting at EAC

Nicole - Would it be ok if we brought 3 people to this meeting so we could bring our project director, Tom O'Neill, one of the people from Eagleton who ran our nationwide survey of county election officials, Tim Vercellotti or April Rapp, and Ned Foley from Moritz School of Law, our partner institution?

Thanks, John

Karen Lynn-Dyson/EAC/GOV
10/25/2005 01:13 PM

To [redacted]
cc
bcc Juliet E. Thompson/EAC/GOV@EAC; Raymundo Martinez/EAC/GOV@EAC
Subject Re: EAC input on the Eagleton draft provisional voting document

Tom-

Our legal department has been inundated with legal requests in the last two weeks, so please pardon our delay in getting our written comments on the draft document back to you.

Julie informs me that you should have these in the next several days.

Hope that the work of the Peer Review Group and work on Voter Id is continuing to progress.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

10/25/2005 02:36 PM

To Juliet E. Thompson/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
cc
bcc
Subject Fw: EAC input on the Eagleton draft provisional voting document

FYI-

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/24/2005 02:32 PM -----

"Tom O'neill"
[redacted]
10/25/2005 01:44 PM

To klynndyson@eac.gov
cc
Subject RE: EAC input on the Eagleton draft provisional voting document

Karen,

Thanks. We are aiming to complete drafting the recommendations for Guidance and Best Practice for Provisional Voting in the next 10 days, so the written comments will be most helpful if they arrive in that time. And, of course, we will be revising the analysis documents in line with the comments from the EAC and the PRG during that time period as well.

Tom O'Neill

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Tuesday, October 25, 2005 1:13 PM
> **To:** [redacted]
> **Subject:** Re: EAC input on the Eagleton draft provisional voting document
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Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
11/14/2005 11:58 AM

To "Tom O'neill" [redacted]
cc
bcc Juliet E. Thompson/EAC/GOV@EAC; Thomas R. Wilkey/EAC/GOV@EAC
Subject RE: EAC input on the Eagleton draft provisional voting document

Greetings Tom-

I write to get an update on how things are progressing with your peer group and staff work on the development of the draft documents.

I would imagine your October monthly report will come in this week.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <tom_oneill@verizon.net>

"Tom O'neill"
[redacted]
10/25/2005 01:44 PM

To klynndyson@eac.gov
cc
Subject RE: EAC input on the Eagleton draft provisional voting document

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Sent: Tuesday, October 25, 2005 1:13 PM
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U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
11/14/2005 03:33 PM

To "Tom O'neill" [redacted]
cc john.weingart@rutgers.edu
bcc
Subject RE: EAC input on the Eagleton draft provisional voting document

Thanks for the update.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
11/15/2005 11:22 AM

To john.weingart@rutgers.edu
cc "Ruth Mandel" <rmandel@rci.rutgers.edu>, "Tom O'Neill"
bcc [redacted]
Subject Re: Provisional Voting Report Status and Request for Advice

John-

Many thanks for getting this draft document to us.

Over the next day or so I will spend time with key EAC staff reviewing the document and considering your questions. As you may recall, Commissioner Martinez has taken a prominent role in the review of your initial work and I am certain he will continue to do so. Sadly, the Commissioner lost his mother two weeks ago and, consequently, will not return to the office until next week.

It is likely that EAC staff will not be able to give you a definitive answer on some of your questions until the Monday after Thanksgiving. I will, however, try to answer some of the administrative questions before that time.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
11/15/2005 10:53 AM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel" <rmandel@rci.rutgers.edu>
cc "Tom O'Neill" [redacted]
Subject Provisional Voting Report Status and Request for Advice

Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18^th . Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?

2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule realistic in anticipating EAC comments no later than the week of December 12^th on the report we send you at the end of this week?

3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)

4. In any case, we will need a no-cost extension to the contract to carry us past December 31^st . How do we make that request?

5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

\--

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

KeyDatesRev1110.doc

Deliberative Process Privilege

DRAFT FOR DISCUSSION

REVISED SCHEDULE FOR EAC PROJECT
November 2005 – February 2006

November 10, 2005
Assumes no guidance document, only analysis and recommended best practices

DATE	Project Management	Provisional Voting	Voter ID
Week of 10/31		Review draft report to EAC (Team) Submit comments on report (Team)	Voter ID Research to TV
Week of 11/7	Status reports to JD for October tasks (all)	Redraft report (TON) Review and approve report (Team) Final draft report (TON)	Research continues (TV)
Week of 11/14	Submit monthly progress report (JD)	**Submit report to EAC for review** and to PRG for information Discuss with EAC use of Board of Advisors to expand "best practices." (TON, JW) EAC reviews report	Research continues (TV)
Week of 11/21		EAC review continues	Complete data collection for Voter ID analysis. (TV)
Week of 11/28		EAC review continues	Draft report on Voter ID analysis (TV)

Week of 12/5	Status reports to JD for November tasks (all)	EAC review continues	Internal review (PT)
Week of 12/12	Submit monthly progress report (JD)	Receive EAC comments on report Revise and PT review	Revise draft (TV) Draft alternatives (TON) Review and comment on alternatives (PT)
Week of 12/19		**Finalize analysis and best practices to EAC for publication**[1]	Complete draft report and alternatives (TV, TON)
Week of 12/26			Review draft report and alternatives (PT)
Week of 1/2/06	Status reports to JD for December tasks (all)		**Report and alternatives to PRG**
Week of 1/9/06			PRG meets and comments Revise (TV & TON)

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[1] If the EAC chooses not to issue a Guidance Document on provisional voting but only to recommend "best practices," the register publication, hearing and comment period may not be required, which would shorten the process by at least 30 days.

DRAFT FOR DISCUSSION

Week of 1/16/06	Submit monthly progress report (JD)	[redacted]	**Submit draft report, alternatives and compendium to EAC** EAC reviews
Week of 1/23/06			EAC review continues
Week of 1/30/06			Comments from EAC Revise (TV & TON)
Week of 2/6/06	Status reports to JD for January tasks (all)		Review and approve revised report and recommendations for best practices (PT)
Week of 2/13/06	Submit monthly progress report (JD)		**Submit report and best practices to EAC**
Week of 2/20/06	FINAL status reports to JD for all tasks (all) Final project and fiscal report to EAC **PROJECT ENDS**		

Karen Lynn-Dyson/EAC/GOV

11/14/2005 05:35 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Donetta L.

cc Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Bert A.

bcc

Subject Fw: October Progress Report

FYI-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 11/13/2005 05:32 PM -----

"Tom O'neill"
[redacted]

11/14/2005 05:27 PM

To klynndyson@eac.gov

cc tokaji.1@osu.edu, foley.33@osu.edu, [redacted]Vincelli@rutgers.edu, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>

Subject FW: October Progress Report

Tom O'Neill

-----Original Message-----
From: Tom O'neill [[redacted]]
Sent: Monday, November 14, 2005 5:26 PM
To: klynndyson@eac.gov
Cc: Vincelli@rutgers.edu; arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; ireed@rutgers.edu; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; rmandel@rci.rutgers.edu; 'Johanna Dobrich'; tokaji.1@osu.edu; foley.33@osu.edu; [redacted]
Subject: October Progress Report

Karen,

Attached is the Progress Report for October. Please note that this report includes at attachment showing how our study classifies each state on key variables, such as counting out-of-precinct ballots, requirements for ballot evaluation, and other variables. It also displays how the data we used differs for some states for the vote counts reported by the Election Day Survey. We believe that our data is more accurate and complete (see for example the data for New Mexico and Pennsylvania).

I look forward to responding to any questions or concerns you or others at the EAC may have.

Tom O'Neill

OctoberFinal.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
October 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

November 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.5
- Voter Identification Requirements
    - Task 3.10
    - Task 3.11
- Project Management
    - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from October 1 through October 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In October we focused on finalizing our Provisional Voting analysis paper, including the development of recommendations to the EAC for a draft guidance document and best practices. These policy prescriptions are based on our research and the comments of the Peer Review Group. We completed a careful review of our data to reconcile it with other sources and identify the latest, most reliable information to use in the analysis. (See the attachment to this Progress Report for the details.) The importance of this demanding effort was described in September's Progress Report.

Also in October we revised the schedule for the project in light of the additional time that has been needed for review of earlier drafts by the EAC and the late completion of the Election Day Study. We will seek a meeting with the EAC in the next several weeks to confer about the schedule to complete the project and alternative approaches that could speed the conclusion of our work.

We will submit to the EAC a final draft of our report, a preliminary guidance document, and draft best practices before Thanksgiving. We project that EAC will take 3 to 4 weeks to review and react to that final draft. And we understand that after its review, the EAC will decide if it should move towards issuing a Guidance Document or recommending best practices. If the EAC does decide to issue a Guidance Document on Provisional Voting, the time needed for a review by the advisory boards is likely to delay a public hearing until early February.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to tom_oneill@verizon.net or by telephone at (908) 794-1030.

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, Tasks 3.5 and 3.6 are nearing completion.

Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of Provisional Voting and develop alternative means to achieve the goals of Provisional Voting.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with Provisional Voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on Provisional Voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and has completed this research.

Progress: We have completed the memorandum outlining Provisional Voting legislative changes since the 2004 election and we are continuing to clarify the laws prior to these changes.

Challenges: The variety in the form and frequency of Provisional Voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The final analysis will be sent to the EAC by Thanksgiving.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with Provisional Voting in 2004. The report findings from the survey of 400 local election officials are now complete. The survey results have proven to be instrumental in shaping our understanding of actual practice in administering Provisional Voting, including the steps local officials took to prepare for the election.

PROVISIONAL VOTING NARRATIVES

Description: To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with Provisional Voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to Provisional Voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

Progress: We completed a state-by-state narrative of developments in Provisional Voting and distributed it to the EAC and the PRG. This work has been helpful in understanding the context of the data collected on provisional voting from the states.

Challenges: The primary obstacle to constructing the narratives was difficultly in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent several revisions to incorporate up-to-date and reliable information. Now that so many other analyses, including the Election Day Survey, have been released, we were challenged by different interpretations of the same basic facts. But the reconciliation of interpretation and data collection has been invaluable in establishing rigor in our report.

Work Plan: We completed revisions of the narratives incorporating comments from the PRG and addressing any discrepancies between our findings and other interpretations of similar information included in other studies.

PROVISIONAL VOTING STATISTICAL ANALYSIS

Description: During October the Eagleton research team continued to check its statistical analysis, and worked to reconcile the classifications of this analysis (such as states counting only those provisional ballots cast within the proper precinct versus states that counted ballots cast within the proper county) with the classification made in other parts of this study or in other studies (such as the Election Day Study or *Electionline* reports).

Progress: The effort to double check all of the classifications used in the study is complete. The results of this effort are displayed in the attachment to this progress report, "Characteristics of the Provisional Voting Process -- Classification of the States," beginning on page 9. Only Delaware and Arkansas remain unclear in regard to one of the measures, and both states have been contacted to receive clarification in this area..

Challenges: The difficulties encountered have been a result of communication delays and time constraints. Some states have been more responsive to our inquires about their practices than others. Overall, this is not an irresolvable problem but it does slow the process of completion down.

Work Plan: By early-November the final revision of the statistical analysis, which includes full reconciliation of all data within the study, will be complete. The reconciliation of data is displayed in the attachment to this progress report.

SURVEY OF COUNTY ELECTION OFFICIALS

Description: The Eagleton Center for Public Interest Polling (CPIP) conducted a national survey of county election officials to measure several aspects of Provisional Voting.

Progress: The analysis of the survey results and findings report is complete. As a result of the critique by the PRG, the research team is revising and clarifying the descriptions of the survey design and sample selection process to make the research methods more transparent.

Work Plan: We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5. We will include necessary clarifications regarding survey design and sample selection in the final analysis and alternatives document.

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations now nearing completion constitutes the draft preliminary guidance document. Based on our conversation with the EAC, the draft gives the EAC the option of proceeding with a guidance document or issuing recommendations to the state for best practices, recommendations that would not constitute voluntary guidance. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we will await the EAC's decision on how to proceed.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is becoming the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: The 50 State (plus the District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Work Plan: Analysis of voter identification data has begun and will increasingly become the central focus of our work.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election

Progress: The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also used exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout.

Challenges: The analysis of these data had been postponed until the data reconciliation of Provisional Voting is complete. As a result of the extensive revision and data reconciliation efforts aimed at the Provisional Voting section of our work VID had been temporarily placed on hold. We are now beginning data analysis on the impact of voter identification requirements on voter turnout.

Work Plan: The analysis of the impact that voter identification requirements have upon voter turnout should be completed by early December. Early January is our target to deliver the draft report and outline of alternative policies to the Peer Review Group. In mid January, the EAC would receive a draft report and recommendations that take into account the comments of the PRG.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: Eagleton has stayed in touch with members of the Peer Review Group since the September 21st conference call, and has solicited their final comments on the Provisional Voting research. During October, we telephoned two members who did not participate in the conference call to confirm their commitment to serving as members of the Peer Review Group. Profess Guy Charles affirmed his interest. Professor Pamela Karlan did not return the call. The revisions in the schedule for the project have now made it possible to begin the process of scheduling a meeting of the PRG to consider our draft report and recommendations on Voter Identification Issues. We anticipate that meeting will take place the second week of January.

Challenges: No new challenges were encountered during October.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project October 1- October 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

ATTACHMENT TO OCTOBER PROGRESS REPORT

Characteristics of the Provisional Voting Process
Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The categories analyzed here are:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting[1] and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as "old" states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline's map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct's list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter's name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island's first use of provisional voting was in 2004 and, therefore, classified the state as "new" to the system of provisional balloting.

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[1] This study can be found at: http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf.

Table 1
CATEGORIZATION OF STATES -- Old vs New

Old States	New States	HAVA Exempt or NA
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
26	**18**	**7**

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[2] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases

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[2] "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf

because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

Table 2
CATEGORIZATION OF STATES -- Statewide Registration Database

Had Database 2004	No Database A-N	No Database N-W	HAVA Exempt or NA
Alaska	Alabama	Ohio	Idaho
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Iowa	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
16	**27**		**8**

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election[2]. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-
of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

Table 3
CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots

Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

Voter Identification

We relied on Electionline studies, including the Voter Identification study[3] and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.[4] The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

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[3] This study can be found at: http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf

[4] In 2004, ElelctionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

Table 4
CATEGORIZATION OF STATES -- Forms of Identification Required
States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Give Name	Sign Name	Match Signature	Provide ID	Photo ID
Maine	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
New Hampshire	*Idaho*	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
Wisconsin	Michigan	West Virginia	Georgia	
Wyoming	Minnesota		Kentucky	
	Mississippi		Missouri	
	Nebraska		Montana	
	New Mexico		*North Dakota*	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
9	**14**	**8**	**15**	**5**

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

Table 5
CATEGORIZATION OF STATES – Ballot Evaluation Methods
States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Signature Match	Data Match	Affidavit	Return with ID	NA
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina[*]
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

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[*] North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

Table 6
Updated information by State

Received Updated Data	Did Not Receive Updated Data
California	Alabama
District of Columbia	Alaska[5]
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland[6]	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska[7]	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
26 States	**25 States**

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[5] Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

[6] Maryland reported provisional ballots that were counted per county, but not number cast.

[7] Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

Data Differences with Election Day Study

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	N/A	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

Karen Lynn-Dyson/EAC/GOV

11/15/2005 11:23 AM

To Juliet E. Thompson/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC

cc

bcc

Subject Fw: Provisional Voting Report Status and Request for Advice

FYI-

Perhaps we can discuss in the next day or so.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 11/14/2005 11:22 AM -----

Karen Lynn-Dyson/EAC/GOV

11/15/2005 11:22 AM

To john.weingart@rutgers.edu

cc "Ruth Mandel" <rmandel@rci.rutgers.edu>, "Tom O'Neill" [redacted]

Subject Re: Provisional Voting Report Status and Request for Advice

John-

Many thanks for getting this draft document to us.

Over the next day or so I will spend time with key EAC staff reviewing the document and considering your questions. As you may recall, Commissioner Martinez has taken a prominent role in the review of your initial work and I am certain he will continue to do so. Sadly, the Commissioner lost his mother two weeks ago and, consequently, will not return to the office until next week.

It is likely that EAC staff will not be able to give you a definitive answer on some of your questions until the Monday after Thanksgiving. I will, however, try to answer some of the administrative questions before that time.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>

11/15/2005 10:53 AM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel" <rmandel@rci.rutgers.edu>
cc "Tom O'Neill" <[redacted]>
Subject Provisional Voting Report Status and Request for Advice

Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18^th . Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?

2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule realistic in anticipating EAC comments no later than the week of December 12^th on the report we send you at the end of this week?

3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)

4. In any case, we will need a no-cost extension to the contract to carry us past December 31^st . How do we make that request?

5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

KeyDatesRev1110.doc

Karen Lynn-Dyson/EAC/GOV
11/17/2005 09:53 AM

To john.weingart@rutgers.edu
cc
bcc Juliet E. Thompson/EAC/GOV@EAC; Adam Ambrogi/EAC/GOV@EAC
Subject Re: Provisional Voting Report Status and Request for Advice

John-

We'll try and get you an answer on some of these by tomorrow.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart" <john.weingart@rutgers.edu>
11/15/2005 10:53 AM
Please respond to john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel" <rmandel@rci.rutgers.edu>
cc "Tom O'Neill" [redacted]
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We look forward to discussing these matters with you.

Thanks, John

--

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

KeyDatesRev1110.doc

Karen Lynn-Dyson/EAC/GOV
11/28/2005 11:59 AM

To john.weingart@rutgers.edu
cc
bcc
Subject Re: Contract modification

Thanks for passing this info on.

Thanks also for sending on the Best Practices document. I'll pass it along to the necessary folks here at EAC and will be back in touch shortly.

P.S. For some reason the phone wasn't working at all when I dialed and I dialed three times.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

12/02/2005 05:38 PM

To Juliet E. Thompson/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC

cc

bcc

Subject Shall we discuss the Eagleton Best Practices Document on Monday at 3:00?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
12/05/2005 04:30 PM

To john.weingart@rutgers.edu
cc
bcc Juliet E. Thompson/EAC/GOV@EAC; Adam Ambrogi/EAC/GOV@EAC; Raymundo Martinez/EAC/GOV@EAC
Subject Re: No Cost Extension Request

John-
Just wanted to let you know that we've had to push back, by a week, the review of Eagleton's Best Practices document.

EAC staff are very focused on the release of the Voting Systems Guidelines; this will be completed by mid-week next week. I'm told that the Commissioners will turn their attention to the Best Practices document, immediately following this.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
12/12/2005 02:36 PM

To john.weingart@rutgers.edu
cc Tamar Nedzar/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC
bcc
Subject Re: No Cost Extension Request

John-

The no-cost extension materials have gone to the Chair for signature and review.

The process should be complete within the week.

Also, EAC staff will be turning their attention to the provisional voting best practices document after Wednesday of this week.

As always, thanks for your patience.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
12/12/2005 04:31 PM

To Gavin S. Gilmour/EAC/GOV@EAC
cc
bcc
Subject Fw: No Cost Extension Request

Gavin-

Is it correct to say that this paperwork that has just gone to the Chair includes an approval of the re-allocation of funds?

Thanks

K

Eagleton no-cost extension.doc Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 12/11/2005 04:28 PM -----

"John Weingart"
<john.weingart@rutgers.edu>
12/12/2005 03:07 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
Subject Re: No Cost Extension Request

Karen - Does that also include the request to reallocate funds or is that just something that doesn't require EAC approval? Thanks, John

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> John-
>
> The no-cost extension materials have gone to the Chair for signature
> and review.
>
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>
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> voting best practices document after Wednesday of this week.
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> As always, thanks for your patience.
>
>
> K
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
01/18/2005 11:48 AM

To Carol A. Paquette/EAC/GOV@EAC
cc
bcc
Subject Re: voter ID research

Yes, I concur with your assessment of combining the work.

I do, however, think there are some particular research questions we'll want to probe related to the voter ID requirements piece. For instance, I think we'll want to gather some state-by-state data regarding their voter ID requirements, and will want to learn more about the State's experiences with voter ID requirements in the last election. Certainly, these inquiries can be folded into the research work a firm will do on provisional balloting.

Hope the NIST meeting is going well..
K

Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Carol A. Paquette/EAC/GOV

Carol A. Paquette/EAC/GOV
01/17/2005 08:35 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject voter ID rsearch

Karen -

Now that I've read again the voter ID section of HAVA, here's my recommendation for the research plan. I think this study should be combined with the provisional voting work because unacceptable voter ID is a reason for a voter receiving a provisional ballot. The impact of the HAVA voter ID requirements is somewhat broader but still the two are closely linked. Since the provisional voting research team is going to look at state law requirements and procedures anyhow, this would fit right in. So it would make sense to me to meld topics 4, 6 and 7 into a single research project with multiple products. What do you think? I'll run this approach by Commissioner Martinez at NIST tomorrow to get his view.

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV
01/18/2005 11:48 AM

To Carol A. Paquette/EAC/GOV@EAC
cc
bcc
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U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Carol A. Paquette/EAC/GOV

Carol A. Paquette/EAC/GOV
01/17/2005 08:35 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
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Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV
01/19/2005 02:26 PM

To Carol A. Paquette/EAC/GOV@EAC
cc
bcc
Subject Re: voter ID research

OK. Hope you make it back from G-burg OK. I'll e-mail you the research/guidance budget by COB today.

K

Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Carol A. Paquette/EAC/GOV

Carol A. Paquette/EAC/GOV
01/18/2005 09:39 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: voter ID research

Karen -

Briefly discussed this with Commissioner MArtinez today and he was in general agreement but wanted to think about it a little further and re-read HAVA provisions.

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
01/18/2005 11:48 AM

To Carol A. Paquette/EAC/GOV@EAC
cc
Subject Re: voter ID research

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Hope the NIST meeting is going well..
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1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Carol A. Paquette/EAC/GOV

Carol A. Paquette/EAC/GOV
01/17/2005 08:35 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject voter ID rsearch

Karen -

Now that I've read again the voter ID section of HAVA, here's my recommendation for the research plan. I think this study should be combined with the provisional voting work because unacceptable voter ID is a reason for a voter receiving a provisional ballot. The impact of the HAVA voter ID requirements is somewhat broader but still the two are closely linked. Since the provisional voting research team is going to look at state law requirements and procedures anyhow, this would fit right in. So it would make sense to me to meld topics 4, 6 and 7 into a single research project with multiple products. What do you think? I'll run this approach by Commissioner Martinez at NIST tomorrow to get his view.

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV

01/28/2005 02:27 PM

To Carol A. Paquette/EAC/GOV@EAC

cc

bcc

Subject SOW for provisional voting and voter ID requirements

Here's a draft of the scope of work.

Look forward to your edits/revisions and to talking through the budget numbers.

Am hoping to leave by 6:00 PM today. Let me know.

Thanks

K

scope of work provisional balloting.doc Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

January 28, 2005

STATEMENT OF WORK FOR EAC VOLUNTARY GUIDANCE ON PROVISONAL VOTING AND VOTER IDENTIFICATION PROCEDURES

1.0 Contract Title: Data Analysis and Development of Guidance on Provisional Voting and Voter Identification Procedures for the U.S. Election Commission

2.0 Background: HAVA stipulates that in an election for Federal office each registered voter whose name does not appear on the official list of eligible voters, or an election official asserts is not eligible to vote, is permitted to cast a provisional ballot. The EAC seeks to examine the current state of provisional voting regarding how states prepared for the onset of HAVA provisional ballot requirements, how litigation affected the implementation of state requirements for provisional voting, how effective provisional balloting was at increasing the franchisement of qualified voters, and if the processes states and localities used consistently and accurately provided for the counting of provisional ballots.

HAVA also notes that voters meet the proper identification requirements if, in the case of an individual who votes in person, he or she presents to the appropriate State or local election official a current and valid photo identification or presents to the appropriate State or local election official a copy of various specified documents. In the case of the individual who votes by mail, he or she meet the proper identification requirements if, submitted with the ballot, is a copy of the voter's current and valid photo identification or other various specified documents. The EAC seeks to examine the current state of voter identification requirements including understanding the states' current rules, laws and requirements regarding voter identification (ID), how states have handled voter ID requirements in the past, what challenges states faced with enforcing voter ID requirements in the last election, and what changes, if any, states plan on implementing regarding voter ID requirements.

3.0 Key objectives of this contract include obtaining assistance with the analysis and interpretation of various data related to provisional balloting and voter identification activities which occurred in the last Federal election and obtaining assistance with the development of a guidance document regarding provisional voting and voter identification procedures.

4.0 Scope: The contractor will identify and perform analyses of various states' legislation, administrative procedures and court cases related to the implementation of provisional voting procedures that took place during the November 2004 Federal election. These initial analyses will help inform the EAC's February, 2005, public hearing on provisional voting.

From these data gathered and findings from the public hearing, the contractor will then draft a preliminary guidance document that will be reviewed and revised by the EAC's Board of Advisors. Once reviewed and subsequently published in the Federal Register, the Contractor will then arrange a public hearing to allow for public comment on the document. The contractor will synthesize and integrate the findings of the public hearing into the final guidance document that it develops and presents to the EAC.

The contractor will also examine, on a state-by-state basis, the voter identification processes and procedures required in that state. The contractor will examine states' experiences with voter identification with the November 2004 election, through a review of the EAC's Election Day and NVRA Surveys. Information gathered from the states, regarding the implementation of voter ID requirements will be incorporated into the public hearings the EAC will conduct as well as the subsequent guidance that is developed.

5.0 Specific Tasks

5.1 Prepare a project work plan. The Contractor will prepare and deliver to the EAC, no later than 10 days after the contract has been awarded, a brief project work plan outlining the project activities and tasks, the products to be delivered and, the timelines in which tasks and products will be delivered.

5.2 Analyze information gathered from a variety of identified sources (including data form EAC's Election Day survey) regarding provisional voting. Diagnose problems and challenges to provisional voting implementation and, hypothesize various alternatives to this implementation. Prepare report/memorandum summarizing research methodology and findings

5.3 Analyze information gathered from a variety of identified sources (including data from EAC's NVRA survey) regarding voter ID requirements. Diagnose problems and challenges to implementing voter ID requirements in the November 2004 election. Hypothesize/analyze the relationship between voter ID requirements and use of provisional voting in the November 2004 election. Prepare report/memorandum summarizing research methodology and findings.

5.4 Develop a "quick look" memorandum summarizing beginning findings of tasks 5.2 and 5.3 for use at the February 23, 2005 EAC hearing on provisional voting.

5.5 Prepare summary report of February 23, 2005 EAC hearing.

5.6 Use analyses and summaries from tasks 5.2, 5.3, and 5.5 to develop draft guidance on provisional voting. Submit draft guidance to EAC Commissioners and Advisory Board for review.

5.7 Use analyses and summaries from tasks 5.2, 5.3 and 5.5 to develop draft guidance on voter identification requirements. Submit draft guidance to EAC Commissioners and Advisory Board for review.

5.8 Incorporate EAC reviews and comments into draft guidance on provisional voting and on voter ID requirements. Prepare guidance for submission to the Federal Register . Collect comment from Federal Register review and incorporate into guidance document.

5.8 In consultation with EAC staff, plan and execute a public hearing on provisional voting and voter identification to present guidance developed by the EAC on these topics.

6.0 Contract Type. The contract types will be firm fixed price in the amount of XXXXX

7.0 Place of performance. The principal place of performance will be the Contract's place of business. Meetings and occasional work efforts may be performed at the EAC,

8.0 Period of Performance. The period of performance is from date of award until September, 2005.

9.0 Deliverables/Delivery Schedule:

- Project work plan - 2/11/05
- "Quick look" memo on provisional voting and voter ID requirements - 2/21/05
- Participation in provisional voting public hearing - 2/23/05
- Summary of public hearing - 3/16/05
- Report summarizing analysis of provisional voting - 4/29/05
- Report summarizing analysis of voter ID requirements - 4/29/05
- Draft guidance on provisional voting - 5/20/05
- Draft guidance on voter ID requirements - 5/27/05
- Submission for provisional voting guidance to Federal Register-6/20/05
- Submission of voter ID requirement to Federal Register-6/20/05
- Public hearing on provisional voting-7/27/05
- Public hearing on voter ID requirements -7/28/05
- Final guidance on provisional voting submitted to EAC- 9/01/05
- Final guidance on voter ID requirements submitted to EAC-9/-1/05

10.0 Inspection and Acceptance.

Karen Lynn-Dyson/EAC/GOV

02/18/2005 03:53 PM

To Sheila A. Banks/EAC/GOV@EAC, Holland M. Patterson/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Spring A.

cc

bcc

Subject Fw: Commissioner approval (by 2/25) of contracting process for work on Provisional Voting and Voter ID projects

Hey-

Forgot to cc you all on this.

Thanks

K

Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 02/18/2005 03:50 PM -----

Karen Lynn-Dyson/EAC/GOV

02/17/2005 04:02 PM

To Gracia Hillman, Paul DeGregorio, DeForest Soaries, Ray Martinez

cc Carol A. Paquette/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC

Subject Commissioner approval (by 2/25) of contracting process for work on Provisional Voting and Voter ID projects

Commissioners-

As was discussed during our session on February 17, 2005, please *review and provide your approval, disapproval or amendments* to the following items by **Friday, February, 25, 2005**:

1. The attached Scope of Work which outlines the tasks related to contract work around projects relating to voluntary guidance on provisional voting and voter identification procedures.

2. The proposal will be advertised beginning **February 28, 2005.**

3. The deadline for submitting proposals will be **March 14, 2005.**

4. Proposal review will be completed by EAC staff by **March 17, 2005**

5. Staff will recommend a contractor to the Commissioners on **March 18, 2005.**

6. Commissioners will be asked for their decisions no later than **Tuesday, March 22, 2005**

STatement of Work - Provisional Voting,Voter ID.doc

Thank you for your help and attention to this matter.

K
Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

February 14, 2005

PROVIDING EAC ASSISTANCE IN DEVELOPING VOLUNTARY GUIDANCE ON PROVISONAL VOTING AND VOTER IDENTIFICATION PROCEDURES

0.0 Contract Title: Assistance to the U.S. Election Assistance Commission in the Development of Guidance on Provisional Voting and Voter Identification Procedures

1.0 Background: Sec. 302(a) of HAVA requires that all States allow the casting of provisional ballots in instances where a voter declares their eligibility to vote but their name does not appear on the official list of eligible voters, or an election official asserts that a voter is not eligible to vote. This section describes several requirements for implementation of provisional voting, but the States have considerable latitude in specifying how to carry out these requirements. The EAC seeks to examine how provisional voting was implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 Federal elections.

HAVA Sec. 303(b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC seeks to examine how these voter identification requirements were implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 elections.

One of the remedies for a voter not having an acceptable proof of identity is to allow the voter to cast a provisional ballot, either at the polling place or by mail. This linkage between these two HAVA sections provides a rationale for conducting research on these topics in parallel. However, it is anticipated that two separate guidance documents will result.

2.0 Objective: The objective of this contract is for EAC to obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics for promulgation to the States in time for implementation for the 2006 Federal elections. The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

3.0 Scope: In general the Contractor shall be responsible for all research and analysis activities, including the conduct of public hearings for fact finding and public comment purposes. However, in light of the urgent need to get this work underway, the EAC has scheduled a public hearing on February 23, 2005, on the topic of provisional voting.

An initial framework for provisional voting policy has been set by the court decisions rendered on the election procedures utilized in the 2004 election. The 6th Circuit decision, in particular, has drawn some boundaries which must be given due regard in the course of considering future policy alternatives for provisional voting.

Notice of public meetings and hearings is required to be published in the Federal Register. The Contractor shall be responsible for preparing the notice documents, and the EAC will submit the notices and cover the cost of publication. In addition, draft guidance documents must be published in the Federal Register to obtain public comment prior to their adoption. Again, the Contractor will work with the EAC to prepare the draft documents for publication, which the EAC will submit and cover the cost of publication. Comments received will be provided to the Contractor for analysis and incorporation into the final guidance documents, as appropriate.

4.0 Specific Tasks

For ease of reference, following task 4.3 the remaining tasks are listed separately under the headings of Provisional Voting and Voter Identification Requirements. It is understood that the work on these two topics will be conducted essentially concurrently, with Voter Identification activities starting approximately one month after Provisional Voting.

4.1 Prepare a project work plan. The Contractor shall prepare and deliver a brief Project Plan not later than 10 days after contract award. This plan shall describe how the Contractor will accomplish each of the project tasks, including a timeline indicating major milestones. A single document will be prepared to include both provisional voting and voter identification tasks. The Plan shall be presented at a project kickoff meeting with the EAC Project Manager.

4.2 Submit monthly progress reports. The Contractor shall submit a monthly progress report within 2 weeks of the end of each month. This report shall provide a brief summary of activities performed and indicate progress against the timeline provided in the Project Plan. Any issues that could adversely affect schedule should be identified for resolution. Budget status should also be provided.

4.3 Conduct periodic briefings for the EAC. The Contractor shall periodically meet with the EAC Project Manager and the lead Commissioner for this work to discuss research findings and progress. The Project Plan should make allowance for this activity. The number and frequency of briefings will be determined by the Contractor Project Manager and the EAC Project Manager as the work progresses. The Contractor may also be required to periodically brief the full Commission on their work.

Provisional Voting

4.4 Collect and analyze State legislation, administrative procedures, and court cases. An understanding of the disparities and similarities of how provisional voting was implemented around the country will provide a baseline for the consideration of future approaches. Seventeen States never had provisional voting before HAVA was enacted, while many other States did. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.

4.5 Recommend alternative approaches for future implementation of provisional voting. The Contractor shall conduct a literature review to identify other research results and data available on this topic. The EAC Election Day Survey, for example, contained several questions on provisional voting. The EAC will make these survey data available to the Contractor. Based on their analysis of available research and the results of Task 4.5, the Contractor shall diagnose the problems and challenges of provisional voting implementation and hypothesize alternative approaches.

The Contractor shall assess the efficacy of these alternatives in relation to the following inter-related policy objectives: (1) enabling the maximum number of eligible voters to cast ballots that will be counted; (2) providing procedural simplicity for voters, poll workers, and election officials; (3) minimizing opportunity for voter fraud; and (4) maintaining a reasonable workload for election officials and poll workers. Additional policy considerations may be identified in the course of this research effort. The Contractor shall document and brief these alternatives to the Commission.

4.6 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board of Advisors meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.

4.7 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.

4.8 Arrange one public hearing for receiving public comment on draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the meeting

4.9 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

Voter Identification Requirements

4.10 Collect and analyze State legislation, administrative procedures, and court cases. It is assumed that the collection of information for analysis of voter identification requirements will be performed concurrently with the research for Task 4.5. An understanding of the disparities and similarities of how voter identification requirements were implemented around the country will provide a baseline for the consideration of future approaches. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.

4.11 Convene a half day public hearing on the topic of voter identification requirements. The Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC. The Contractor shall identify three panels of three to four speakers each. The Contractor shall arrange for speaker attendance to include travel and per diem expenses. The EAC will provide publicity for the hearing. The Contractor shall prepare a document summarizing the proceedings and containing all testimony provided.

4.12 Recommend alternative approaches for future implementation of HAVA voter identification requirements. The Contractor shall conduct a literature review to identify other research results and data available on this topic. Based on their analysis of available research and the results of Task 5.11, the Contractor shall diagnose the problems and challenges of voter identification and hypothesize alternative approaches. The Contractor shall coordinate with the EAC to identify appropriate policy objectives by which to assess these alternatives. The Contractor shall document and brief these alternatives to the Commission.

4.13 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.

4.14 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.

4.15 Arrange one public hearing for receiving public comment on the draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the hearing.

4.16 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

Contract Type. The contract type will be Time and Materials with a ceiling of

6.0 Place of performance. The principal place of performance will be the Contractor's place of business. Meetings and occasional work efforts may be performed at the EAC offices.

7.0 Period of Performance. The period of performance is from date of award until October 28, 2005.

8.0 Schedule of Deliverables:

- Project plan – 10 days after contract award
- Progress reports – monthly
- Briefings – as required
- Analysis report on provisional voting - TBD
- Alternatives report on provisional voting – TBD
- Preliminary draft guidance on provisional voting - TBD
- Draft guidance on provisional voting for publication – 8/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on provisional voting for EAC adoption – 9/2005
- Analysis report on voter identification requirements – TBD
- Public hearing on voter identification requirements – TBD
- Summary of voter identification requirements hearing - TBD
- Alternatives report on voter identification requirements - TBD
- Preliminary draft guidance on voter identification requirements - TBD
- Draft guidance on voter identification requirements for publication – 9/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on voter identification requirements to EAC for adoption – 10/2005

REMAINING STANDARD CONTRACT TERMS TO BE PROVIDED.

Karen Lynn-Dyson/EAC/GOV

03/29/2005 12:41 PM

To Carol A. Paquette/EAC/GOV@EAC

cc Brian Hancock/EAC/GOV@EAC, Troy Griffis/EAC/GOV@EAC

bcc

Subject Evaluation Criteria, Provisional Voting RFP

Carol-

Here is my take on the evaluation criteria for the RFP.
Feel free to revise.
Let me know next steps in the review process, when you can.

K

EVALUATION CRITERIA Provisional voting.doc Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

EVALUATION CRITERIA

Request for Proposal-Development of voluntary guidance on provisional voting and voter identification procedures

These are the criteria and possible point values that will be sued to evaluate proposals.

1. Appropriateness of research methodology and adequacy of analytical strategy (15 points)
2. Principal Investigator's relevant experience (10 points)
3. Relevant organizational experience (10 points)
4. Compliance with proposal instructions (5 points)
5. Reasonableness of allocation of resources to work components (10 points)
6. Results of reference checks (5 points)

ELECTION ASSISTANCE COMMISSION
UNITED STATES OF AMERICA

Technical Evaluation Criteria
for
Development of Guidance on Provisional Voting and Voter Identification Procedures

Evaluator: Date:

Bidder:

1. Demonstrated understanding of the issues of provisional voting and voter identification. (30 points)

Factors: Grasp of major issues and subtle complexities of provisional voting (15 points), grasp of major issues and subtle complexities of Voter ID requirements (15 points)

2. Well-defined and organized research and analysis methodology. (20 points)

Factors: Demonstrated understanding of legal and legislative analysis (12 points), clearly delineated research methodology and plan for conducting analysis (8 points)

3. Principal Investigator's relevant experience. (20 points)

Factors: knowledge of and experiences with the elections process (8 points), knowledge of and experiences with public administration, legal and legislative analysis (8 points), conduct of project work similar to this effort (e.g., reporting to Congress, similar subject matter, (4 points)

4. Relevant organizational experience with this type of research. (15 points)

5. Compliance with proposal instructions. (5 points)

Factors: followed instructions (1), presented a clear proposal (2), overall quality of proposal (2)

6. Results of reference checks. (10 points)

Questions for reference checks:

1. Was work done on schedule?
2. Was work done within budget?
3. What was quality of work product?
4. Describe and characterize the working relationship.
5. Did contractor produce any unique insights, any value-added results?

Karen Lynn-Dyson/EAC/GOV

03/30/2005 11:49 AM

To Carol A. Paquette/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC

cc

bcc

Subject Technical Evaluation Criteria Worksheet

Carol and Brian-

Take a look at this worksheet and see if it adequately covers the factors we'll use to evaluate the Provisional Voting/Voter ID proposals.

Thanks

K

Technical Evaluation Criteria.doc

Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

05/13/2005 01:14 PM

To Carol A. Paquette/EAC/GOV@EAC
cc
bcc Gracia Hillman/EAC/GOV@EAC
Subject Kick off meeting with Eagleton

Carol-

Are we still on track to have our kick-off meeting with Eagleton next Wednesday, May 18 at 1:00?

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
06/08/2005 01:06 PM

To "Tom O'Neill" <[redacted]
cc
bcc
Subject RE: Survey of local election officials

Greetings-

I checked in with my colleagues and they agree that the best approach for you to use is to purchase a list from a commercial publisher. While the EAC has been working on such a list it is a monumental task and a difficult list to assemble and keep current.

Also, I have just reviewed your project workplan. I'd like to receive it in a GANTT chart format.

I'm having difficulty getting a sense of the timeframes and various tasks that must be accomplished; a landscape rather than horizontal format will make this easier to grasp.

Thanks

K
Karen Lynn-Dyson
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" <tom_oneill@verizon.net>

"Tom O'Neill"
[redacted]
06/07/2005 02:56 PM

To klynndyson@eac.gov
cc
Subject RE: Survey of local election officials

Thanks, Karen.

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, June 07, 2005 2:29 PM
To: bhancock@eac.gov; bwhitener@eac.gov
Cc: [redacted]
Subject: Fw: Survey of local election officials

Hey Brians-

Got an answer for me on this?

Thanks

K
Karen Lynn-Dyson
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/07/2005 02:25 PM -----

"Tom O'Neill" <tom_oneill@verizon.net>

06/07/2005 01:55 PM

To klynndyson@eac.gov
cc Vincelli@rutgers.edu
Subject Survey of local election officials

Karen,

A survey of county election officials to learn their experience with provisional voting in 2004 is an important part of our research. To construct a sample of the local officials, we must begin with a complete list of all county election officials. We have reached out to the following organizations to obtain one.

International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT)

National Association of County Recorders, Election Officials and Clerks (NACRC)

National Association of County Officials (NACO)

IACREOT & NACRC do not offer their directories to non-member. Rutgers is not eligible for membership to either organization. NACO offers a list, but it includes only 695 officials, which would exclude about 2300 counties from the universe from which we will select a sample.

Does EAC have access to, or can it gain access to, a list of county election officials for all US counties?

If that is not possible, we can purchase a list from a commercial publisher (Carroll), but I don't know how regularly it is updated.

The first action step in the survey process will be to select the sample. Each official selected will receive a letter describing the study and its purpose. The actual interview will follow some days later and will be conducted by telephone. Ideally, the list would include a mailing address and telephone contact information.

Tom

Karen Lynn-Dyson/EAC/GOV
06/16/2005 05:42 PM

To Adam Ambrogi/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC
cc
bcc
Subject Fw: Provisional Voting by state

Hey Gents-

Ideas on this?

Thanks

Karen Lynn-Dyson
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/16/2005 05:41 PM -----

"Tom O'Neill"
[redacted]
06/16/2005 05:28 PM

To klynndyson@eac.gov
cc
Subject Provisional Voting by state

Karen:

For our sample survey of local election officials, we need a dispositive list of those states that had provisional voting before HAVA and those for which provisional voting was new. Can you supply one?

I know there are complexities (such as the 6 states with election day registration that were exempt from the HAVA requirement), but I am not sure what all those complexities are. Do you believe that making a list of the pre and post HAVA provisional voting states is possible? If not, we'll abandon the plan to oversample the new provisional voting states that we planned so that we could draw conclusions about the difference experience made in administering the provisional voting process.

Tom

Karen Lynn-Dyson/EAC/GOV
06/17/2005 05:52 PM

To [redacted]
cc Carol A. Paquette/EAC/GOV@EAC
bcc
Subject Re: Revised Work Plan --Gantt Chart

Thanks, Tom

I'll be back in touch, once I've had a chance to more thoroughly review the contents of the chart.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" <tom_oneill@verizon.net>

"Tom O'Neill"
[redacted]
06/17/2005 03:43 PM

To klynndyson@eac.gov
cc
Subject Revised Work Plan --Gantt Chart

Karen,

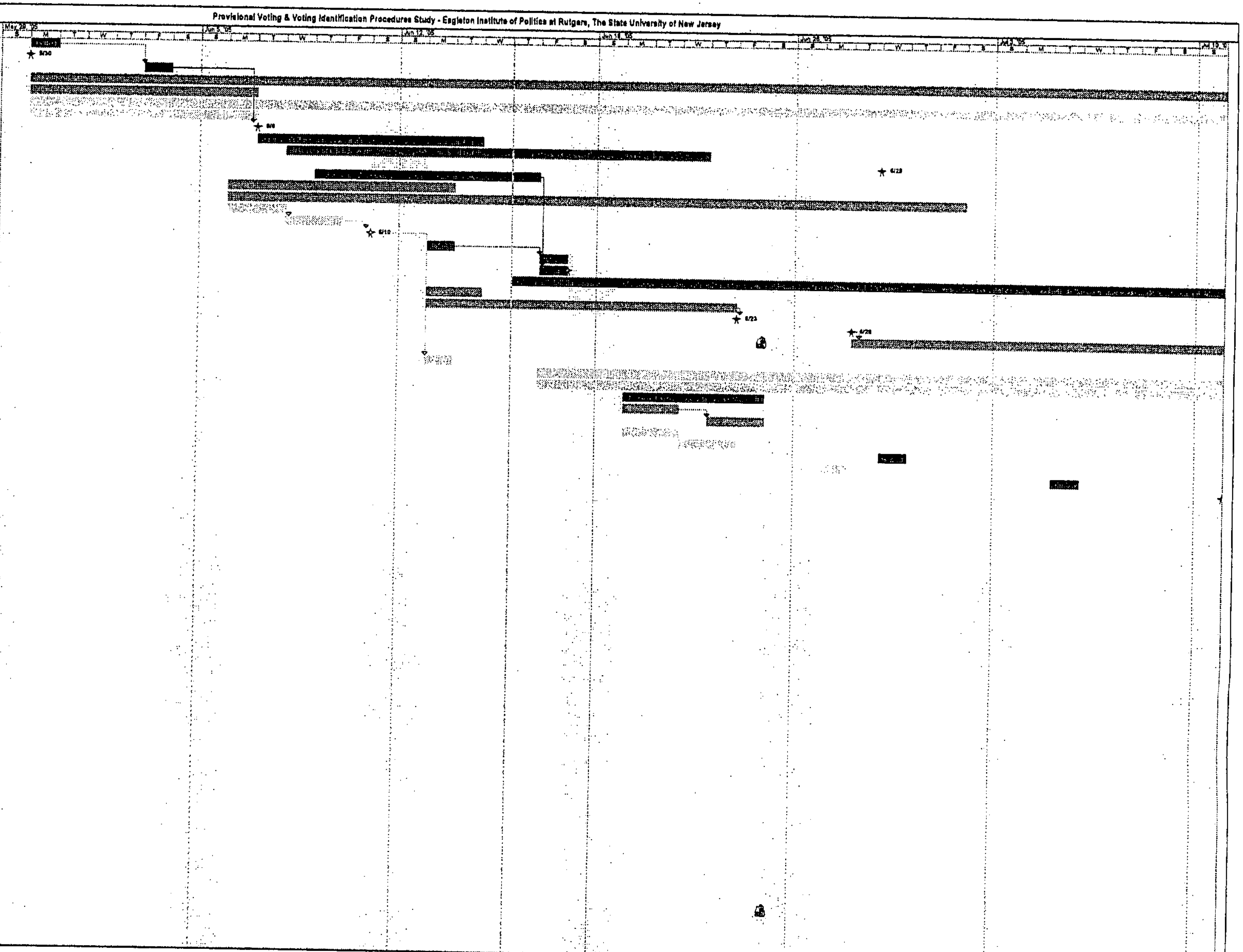
Attached is the Gantt chart that you and Carol requested. I think it is most useful if used in conjunction with the work plan table that I sent originally, but whether you use it as freestanding guide to the project or as a supplement, I hope it meets your needs.

The narrative to complement the Gantt chart will be along early next week.

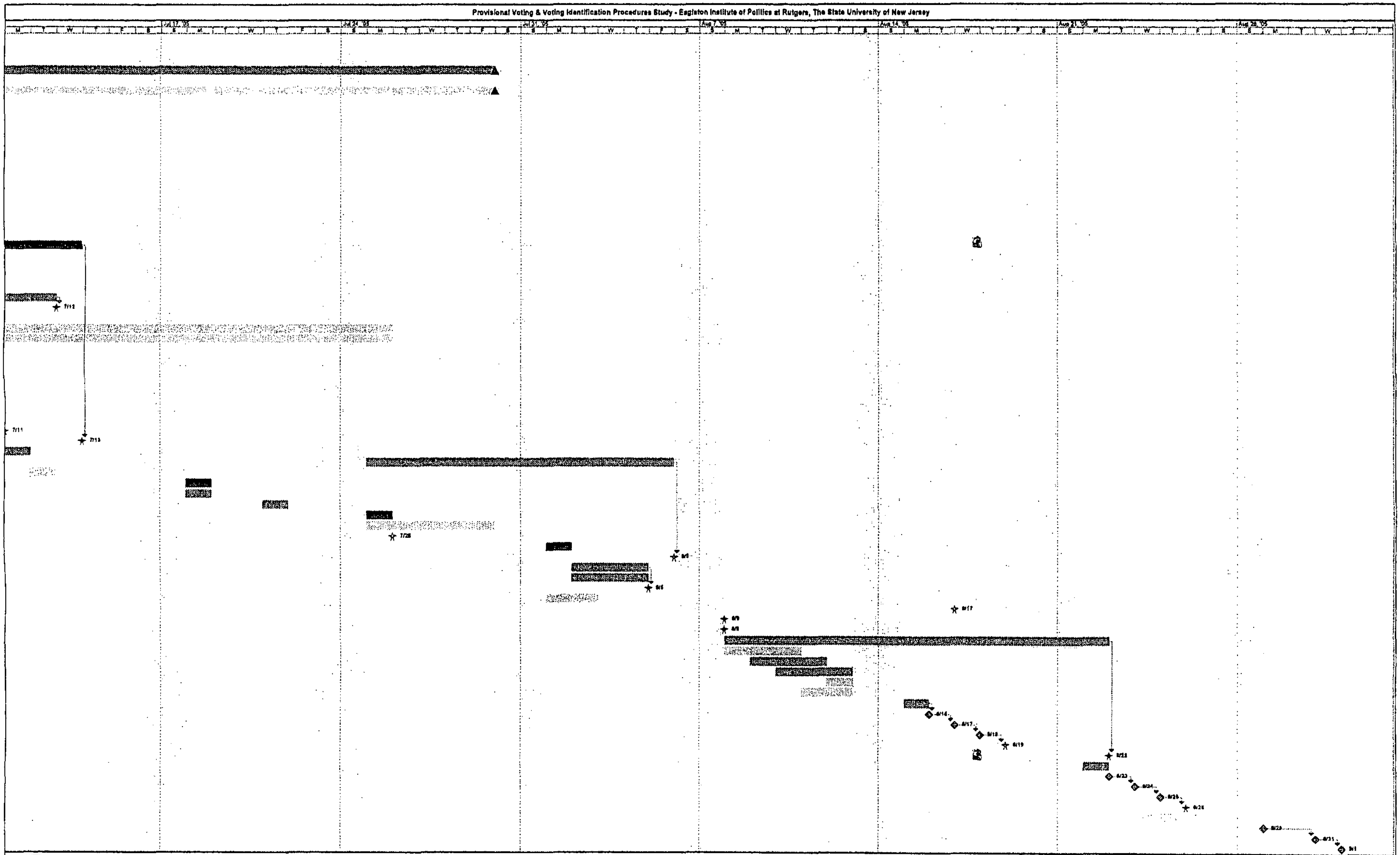
Tom GanttChartFinal.pdf

Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

ID	Task Name	Duration	Start	Finish
1	Update work plan	1 day	Mon 5/30/05	Mon 5/30/05
2	Meeting of Rutgers team	0 days	Mon 5/30/05	Mon 5/30/05
3	Review updated work plan	1 day	Fri 6/3/05	Fri 6/3/05
4	Compile legislation	45 days?	Mon 5/30/05	Fri 7/29/05
5	Begin survey design at kick off.	6 days?	Mon 5/30/05	Mon 6/6/05
6	Compile legislation	45 days	Mon 5/30/05	Fri 7/29/05
7	Scan for panelists, identify hearing panels	6 days	Mon 5/30/05	Mon 6/6/05
8	Updated work plan to EAC	0 days	Mon 6/6/05	Mon 6/6/05
9	Identify possible PRG members	6 days	Tue 6/7/05	Tue 6/14/05
10	Subcontract to MCL	11 days	Wed 6/8/05	Wed 6/22/05
11	Execute by MCL	0 days	Wed 6/29/05	Wed 6/29/05
12	Coordinate design of data mngmt system	6 days	Thu 6/9/05	Thu 6/16/05
13	Gain survey approvals and contract	6 days	Mon 6/6/05	Mon 6/13/05
14	Scan info sites on provisional voting	20 days?	Mon 6/6/05	Fri 7/1/05
15	Develop priority list	2 days	Mon 6/6/05	Tue 6/7/05
16	Agree on panel recommendations	2 days	Wed 6/8/05	Thu 6/9/05
17	List to EAC / EAC Approval	0 days	Fri 6/10/05	Fri 6/10/05
18	PRG nominations to Team for review	1 day?	Mon 6/13/05	Mon 6/13/05
19	PRG nominations to EAC review	1 day?	Fri 6/17/05	Fri 6/17/05
20	Set up data management system	1 day?	Fri 6/17/05	Fri 6/17/05
21	Develop project website	20 days?	Thu 6/16/05	Wed 7/13/05
22	Receive election day study and review it	2 days?	Mon 6/13/05	Tue 6/14/05
23	Draft survey instrument / Sampling Tech.	9 days?	Mon 6/13/05	Thu 6/23/05
24	Draft survey to EAC	0 days	Thu 6/23/05	Thu 6/23/05
25	Survey to IRB	0 days	Tue 6/28/05	Tue 6/28/05
26	IRB Review	11 days?	Tue 6/28/05	Tue 7/12/05
27	IRB Approval	0 days	Tue 7/12/05	Tue 7/12/05
28	Revise panelist list	1 day?	Mon 6/13/05	Mon 6/13/05
29	Scan info sites for Voter ID state issues	27 days?	Fri 6/17/05	Mon 7/25/05
30	Data collection on Voter ID & turnout	27 days?	Fri 6/17/05	Mon 7/25/05
31	Recruit PRG members	5 days?	Mon 6/20/05	Fri 6/24/05
32	Team approves survey & reviews w/ EAC	2 days?	Mon 6/20/05	Tue 6/21/05
33	Review board approves survey	2 days?	Thu 6/23/05	Fri 6/24/05
34	Draft panelist letter for EAC	2 days?	Mon 6/20/05	Tue 6/21/05
35	Develop questions for panel	2 days?	Wed 6/22/05	Thu 6/23/05
36	Background materials to PRG members	1 day?	Wed 6/29/05	Wed 6/29/05
37	Follow up with panelists	1 day?	Mon 6/27/05	Mon 6/27/05
38	Status reports June tasks (all)	1 day?	Tue 7/5/05	Tue 7/5/05
39	June Progress Report to EAC	0 days	Mon 7/11/05	Mon 7/11/05
40	Website Operational	0 days	Wed 7/13/05	Wed 7/13/05
41	Survey approval by Review Board	1 day?	Mon 7/11/05	Mon 7/11/05
42	Survey in the field	10 days?	Mon 7/25/05	Fri 8/5/05
43	Review hearing summary	1 day?	Tue 7/12/05	Tue 7/12/05
44	Brief PRG on progress and conclusions	1 day?	Mon 7/18/05	Mon 7/18/05
45	Summarize Election Day Study	1 day?	Mon 7/18/05	Mon 7/18/05
46	Review and discuss Election Day Study	1 day?	Thu 7/21/05	Thu 7/21/05
47	Brief stakeholders on progress and conc.	1 day?	Mon 7/25/05	Mon 7/25/05
48	Data analysis of Voter ID & turnout	5 days?	Mon 7/25/05	Fri 7/29/05
49	Hearing	0 days	Tue 7/26/05	Tue 7/26/05
50	Status reports to LV for July Tasks	1 day?	Mon 8/1/05	Mon 8/1/05
51	Survey complete	0 days	Fri 8/5/05	Fri 8/5/05
52	Draft analysis and alternatives	3 days?	Tue 8/2/05	Thu 8/4/05
53	Complete compendium	3 days?	Tue 8/2/05	Thu 8/4/05
54	Review analysis and compendium	0 days	Fri 8/5/05	Fri 8/5/05
55	Data analysis of Voter ID & turnout	2 days?	Mon 8/1/05	Tue 8/2/05
56	Hearing Summary to EAC	0 days	Wed 8/17/05	Wed 8/17/05
57	July Progress Report to EAC	0 days	Mon 8/8/05	Mon 8/8/05
58	Submit analysis and alts. Draft to PRG	0 days	Mon 8/8/05	Mon 8/8/05
59	Survey Analysis	11 days?	Mon 8/8/05	Mon 8/22/05
60	Draft hearing summary	3 days?	Mon 8/8/05	Wed 8/10/05
61	Survey results available	3 days?	Tue 8/9/05	Thu 8/11/05
62	Arrange October Public Hearing	3 days?	Wed 8/10/05	Fri 8/12/05
63	PRG reviews analysis & alts.	1 day?	Fri 8/12/05	Fri 8/12/05
64	Complete draft report on Voter ID turnout	2 days?	Thu 8/11/05	Fri 8/12/05
65	PRG comments on analysis & alts.	1 day?	Mon 8/15/05	Mon 8/15/05
66	Revise	0 days	Tue 8/16/05	Tue 8/16/05
67	Review	0 days	Wed 8/17/05	Wed 8/17/05
68	Revise	0 days	Thu 8/18/05	Thu 8/18/05
69	Draft report & compendium to EAC	0 days	Fri 8/19/05	Fri 8/19/05
70	Review draft report on Voter ID & turnout	0 days	Mon 8/22/05	Mon 8/22/05
71	Survey analysis complete	1 day?	Mon 8/22/05	Mon 8/22/05
72	Draft outline of PGD	0 days	Tue 8/23/05	Tue 8/23/05
73	Review draft outline	0 days	Wed 8/24/05	Wed 8/24/05
74	Revise	0 days	Thu 8/25/05	Thu 8/25/05
75	Meet w/EAC to review draft report	0 days	Fri 8/26/05	Fri 8/26/05
76	Revise report	3 days?	Wed 8/24/05	Fri 8/26/05
77	Draft PGD	0 days	Mon 8/29/05	Mon 8/29/05
78	Review	0 days	Wed 8/31/05	Wed 8/31/05
79	Revise	0 days	Thu 9/1/05	Thu 9/1/05

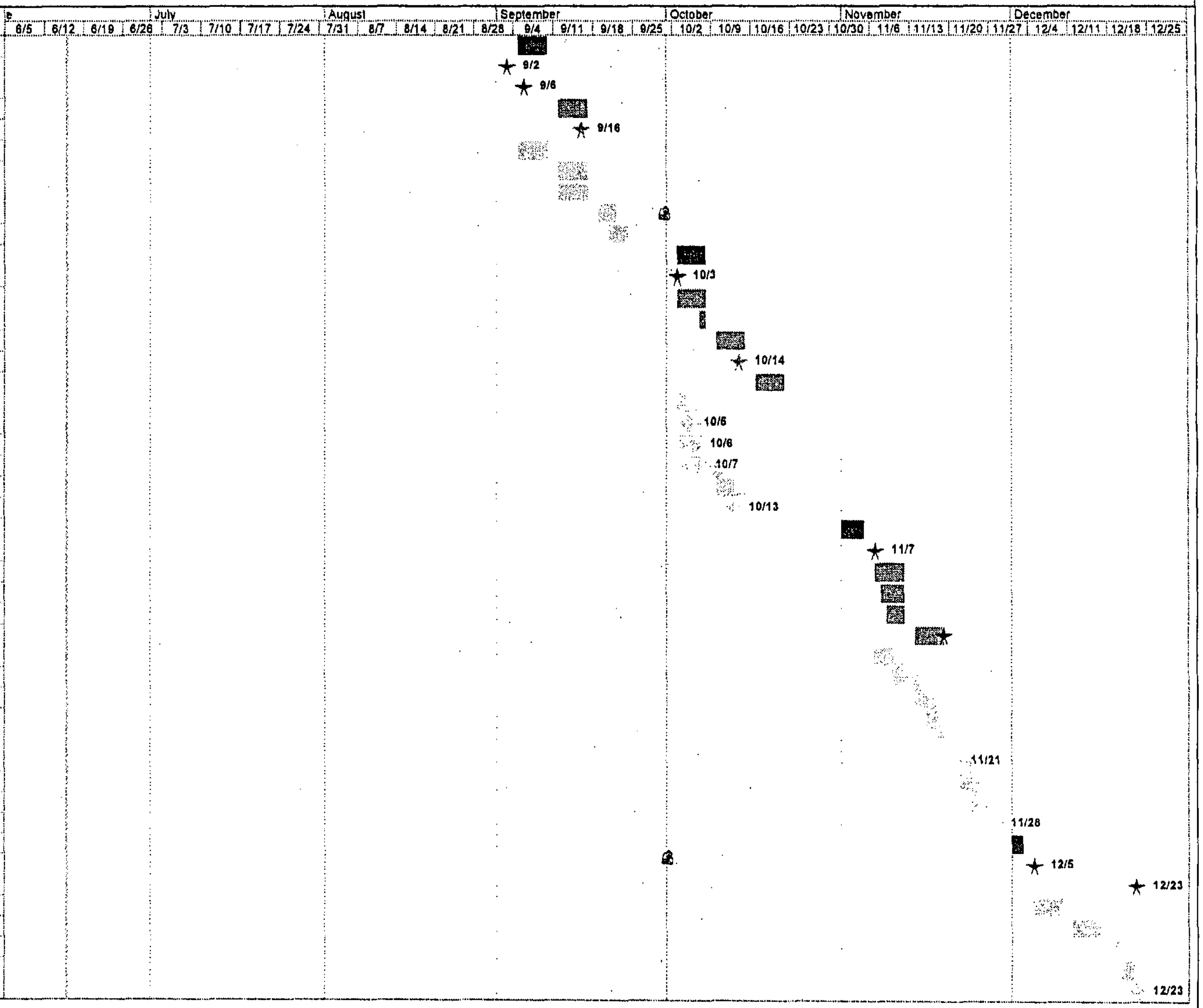


Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey



Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

ID	Task Name	Duration	Start	Finish
1	Status reports for August tasks	5 days?	Mon 9/5/05	Fri 9/9/05
2	August Progress Report to EAC	0 days	Fri 9/2/05	Fri 9/2/05
3	Draft PGD to EAC for review	0 days	Tue 9/6/05	Tue 9/6/05
4	Receive EAC commnets; revise	5 days?	Mon 9/12/05	Fri 9/16/05
5	Submit Draft GD to EAC BOA & SB	0 days	Fri 9/16/05	Fri 9/16/05
6	Draft Analysis & Alts. Report	5 days?	Mon 9/5/05	Fri 9/9/05
7	Complete Compendium	5 days?	Mon 9/12/05	Fri 9/16/05
8	Arrange December Public Hearing	5 days?	Mon 9/12/05	Fri 9/16/05
9	Review draft report	3 days?	Mon 9/19/05	Wed 9/21/05
10	Revise draft report	3 days?	Wed 9/21/05	Fri 9/23/05
11	Status reports for Septemeber tasks	5 days?	Mon 10/3/05	Fri 10/7/05
12	September Progress Report to EAC	0 days	Mon 10/3/05	Mon 10/3/05
13	Meet EAC BOA/SB	5 days?	Mon 10/3/05	Fri 10/7/05
14	Revise GD	1 day?	Fri 10/7/05	Fri 10/7/05
15	Draft GD to EAC for publication	5 days?	Mon 10/10/05	Fri 10/14/05
16	Publication	0 days	Fri 10/14/05	Fri 10/14/05
17	Public Hearing on GD	5 days?	Mon 10/17/05	Fri 10/21/05
18	Report Analysis & Alts. To PRG	2 days?	Mon 10/3/05	Tue 10/4/05
19	PRG Comments	0 days	Wed 10/5/05	Wed 10/5/05
20	Revise	0 days	Thu 10/6/05	Thu 10/6/05
21	Submit draft to EAC	0 days	Fri 10/7/05	Fri 10/7/05
22	Revise	3 days?	Mon 10/10/05	Wed 10/12/05
23	Report, Alts., & Compendium to EAC	0 days	Thu 10/13/05	Thu 10/13/05
24	Status reports for October tasks	4 days?	Tue 11/1/05	Fri 11/4/05
25	October Progress Report to EAC	0 days	Mon 11/7/05	Mon 11/7/05
26	Hearing Summary	5 days?	Mon 11/7/05	Fri 11/11/05
27	Analysis of Comments	4 days?	Tue 11/8/05	Fri 11/11/05
28	Revise Guidance Document	3 days?	Wed 11/9/05	Fri 11/11/05
29	Final Guidance to EAC for adoption	5 days?	Mon 11/14/05	Fri 11/18/05
30	Draft PGD	3 days?	Mon 11/7/05	Wed 11/9/05
31	Review draft	2 days?	Thu 11/10/05	Fri 11/11/05
32	Draft PGD to EAC for review	2 days?	Mon 11/14/05	Tue 11/15/05
33	Revise	2 days?	Wed 11/16/05	Thu 11/17/05
34	PGD to BOA	1 day?	Fri 11/18/05	Fri 11/18/05
35	Meet EAC, BOA/SB	0 days	Mon 11/21/05	Mon 11/21/05
36	Revise Draft GD	2 days?	Tue 11/22/05	Wed 11/23/05
37	Draft GD to EAC	1 day?	Thu 11/24/05	Thu 11/24/05
38	Publication	0 days	Mon 11/28/05	Mon 11/28/05
39	Status reports for November tasks	2 days?	Thu 12/1/05	Fri 12/2/05
40	November Progress Reports to EAC	0 days	Mon 12/5/05	Mon 12/5/05
41	Final Reports to EAC	0 days	Fri 12/23/05	Fri 12/23/05
42	Public Hearing	5 days?	Mon 12/5/05	Fri 12/9/05
43	Hearing Summary	5 days?	Mon 12/12/05	Fri 12/16/05
44	Analysis of comments	1 day?	Mon 12/19/05	Mon 12/19/05
45	Revise Guidance Document	3 days?	Tue 12/20/05	Thu 12/22/05
46	EAC revises and adopts Final GD	0 days	Fri 12/23/05	Fri 12/23/05



Karen Lynn-Dyson/EAC/GOV
06/17/2005 05:56 PM

To "Tom O'Neill" <[redacted]
cc
bcc
Subject Re: Provisional Voting by state

Tom-

I checked with our staff and they indicated that we don't have such a list. This is the kind of work that one your research project interns would/will have to do.

Good luck with creating a good, representative sample population.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" <tom_oneill@verizon.net>

"Tom O'Neill"
[redacted]
06/16/2005 05:28 PM

To klynndyson@eac.gov
cc
Subject Provisional Voting by state

Karen:

For our sample survey of local election officials, we need a dispositive list of those states that had provisional voting before HAVA and those for which provisional voting was new. Can you supply one?

I know there are complexities (such as the 6 states with election day registration that were exempt from the HAVA requirement), but I am not sure what all those complexities are. Do you believe that making a list of the pre and post HAVA provisional voting states is possible? If not, we'll abandon the plan to oversample the new provisional voting states that we planned so that we could draw conclusions about the difference experience made in administering the provisional voting process.

Tom

Karen Lynn-Dyson/EAC/GOV
06/23/2005 01:45 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc
bcc
Subject Fw: Peer Review Group

Tom-

When you get a moment- could you review Eagleton's proposed Peer Review Group roster and offer your thoughts/suggestions.

Thanks

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/23/2005 01:44 PM -----

"Tom O'Neill"
[redacted]
06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
Subject Peer Review Group

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Tom

PROPOSED MEMBERS OF PEER REVIEW GROUP.doc

PROPOSED MEMBERS OF PEER REVIEW GROUP

R. Michael Alvarez, Ph.D.
Professor of Political Science
California Institute of Technology
rma@hss.caltech.edu
626-395-4422
Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College; his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

Deborah Goldberg, Ph.D
Program Director, Democracy Program
Brennan Center for Justice at NYU School of Law
161 Avenue Of The Americas, 12th Floor
New York, NY 10013
212-998-6730
Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.

Martha E. Kropf, Ph.D.
Assistant Professor of Political Science
University of Missouri-Kansas City
816-235-5948; KropfM@umkc.edu
Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

Wade Henderson, Esq.
Executive Director
Leadership Conference on Civil Rights
1629 K Street, NW, 10th Floor
Washington, DC 20006
Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU.

Kay Maxwell
President
League of Women Voters of the U.S.
1730 M Street NW, Suite 1000

Washington, DC 20036-4508
202-429-1965
Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project.

Tim Storey
Program Principal
Legislative Management Program
National Conference of State Legislatures
7700 East First Place
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303-364-7700
or
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
202-624-5400

Peter G. Veniero, Esq.
Counsel
Sills, Cummis, Epstein and Gross, PC
One Riverfront Plaza
Newark, New Jersey 07102
Tel: 973- 643-7000
Verniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

Karen Lynn-Dyson/EAC/GOV
06/23/2005 02:23 PM

To "Tom O'Neill" [redacted]
cc
bcc Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: Peer Review Group

Tom-

I will be back to you early next week with EAC's feedback on this.

Our initial reaction is that the group needs to include some local and/or state-level election officials, who have first-hand experience with these issues.

We will get you additional names and reactions by mid-week next week.

Thanks
K

Karen Lynn-Dyson
Research Manager
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1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" <[redacted]>

"Tom O'Neill"
[redacted]
06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
Subject Peer Review Group

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Tom

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Karen Lynn-Dyson/EAC/GOV

06/23/2005 02:34 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC

bcc

Subject Fw: Peer Review Group

Commissioners-

Enclosed please find a preliminary list of Peer Review Group members, whom Eagleton is considering for their Peer Review Group. **Tom Wilkey will be bringing this item to you for discussion and input at Monday's Commissioner's meeting.**

Eagleton envisions this Peer Review Group as the body that will review the draft analysis that it will prepare on provisional voting and on voter identification. The Group would also provide comment on the development of alternative approaches to provisional voting and voter identification which Eagleton will develop for the EAC.

I have included the e-mail from the Eagleton Project Director, Tom O'Neil, so that you could get a feel for his approach/philosophy to assembling the Group.

Regards-
K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/23/2005 02:25 PM -----

"Tom O'Neill"
<[redacted]
06/22/2005 03:29 PM

To klynndyson@eac.gov

cc

Subject Peer Review Group

Karen,

As you probably recall, one of the features of our proposal was the creation of a Peer Review Group to look over our findings, conclusions and draft reports before we prepare final drafts for the EAC's review. The EAC asked that before recruiting members of the PRG twe submit names for EAC's review. The aim, course, is to assemble a panel that is experienced, informed, and balanced.

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We may conclude that the PRG should also include two or three former government officials now in academia or related fields. We have a conference call with our partners at Moritz planned for tomorrow or Friday to decide a) if former officials should be included in the PRG and b)if so, who they should be. I'll keep you informed of our thinking as it develops.

Tom

PROPOSED MEMBERS OF PEER REVIEW GROUP.doc

Karen Lynn-Dyson/EAC/GOV
06/27/2005 05:45 PM

To "[redacted]

cc

bcc Sheila A. Banks/EAC/GOV@EAC; Adam Ambrogi/EAC/GOV@EAC; Aimee Sherrill; Thomas R. Wilkey/EAC/GOV@EAC; Juliet E. Thompson/EAC/GOV@EAC

Subject RE: Peer Review Group

Tom-

Had a very good review and discussion of the PRG at this morning's Commissioner meeting.

Also, the Commissioners have marked their calendars for a conference call with the Eagleton/Moritz team on July 12 at 9:30 AM.

Several concerns were raised about the composition of the PRG and, after some discussion, I indicated that Eagleton will provide the EAC with a revised participant list, and with a more detailed description of the PRG's mission, goals, objectives, workplan and timelines for accomplishing its work.

The Vice Chair is concerned that there is not sufficient conservative representation on the PRG. I would suggest the team do more research to identify well-recognized conservative academics to put on the Group.

Further, the Commissioners recommend a tiered process in which the PRG will prepare a "dispassionate" analysis of the issues and draw some tentative conclusions. This analysis and these conclusions will then be vetted with a defined/select group of local election officials, and then, with a defined/select group of advocacy organizations.

It was also suggested that a final round of focus group meetings be held with a cross-section of these election officials, advocates and academics for an overall interactive reaction to the analysis and recommendations.

Hope this helps clarify concerns; I look forward to sharing your revisions to the PRG with them.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" [redacted]

"Tom O'Neill"
[redacted]
06/23/2005 02:43 PM

To klynndyson@eac.gov

cc

Subject RE: Peer Review Group

Thanks, Karen.

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, June 23, 2005 2:24 PM
To:[redacted]
Subject: Re: Peer Review Group

Tom-

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K

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Research Manager
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1225 New York Avenue , NW Suite 1100
Washington, DC 20005
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"Tom O'Neill" <[redacted]

06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
Subject Peer Review Group

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Tom

Karen Lynn-Dyson/EAC/GOV
06/24/2005 06:35 PM

To "[redacted]
cc Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject RE: Peer Review Group

Tom-

I'd like to schedule a conference call among EAC and Eagleton staff for sometime the early part of the week of July 11. Please let me know dates and times on your end and I'll coordinate with staff here.

During the call we can review your monthly report and cover any problems, challenges, needs, etc. that the Eagleton team may have.

Thanks

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" [redacted]>

"Tom O'Neill"
<[redacted]>
06/23/2005 02:43 PM

To klynndyson@eac.gov
cc
Subject RE: Peer Review Group

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-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
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1225 New York Avenue , NW Suite 1100
Washington, DC 20005
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"Tom O'Neill" [redacted]

06/22/2005 03:29 PM

To klynndyson@eac.gov
cc
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Tom

Karen Lynn-Dyson/EAC/GOV
07/07/2005 02:36 PM

To "Tom O'Neill" <[redacted]
cc "Vincelli, Lauren" <Vincelli@rutgers.edu>
bcc
Subject Re: Progress and Status reports

Indeed, the contract is your best reference on this.

I merely referred to both status and progress report since that is what Rutgers has put in their program plan and their Gantt chart.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" <[redacted]

"Tom O'Neill"
[redacted]
07/07/2005 02:23 PM

To "Lynn-Dyson, Karren" <klynndyson@eac.gov>
cc "Vincelli, Lauren" <Vincelli@rutgers.edu>
Subject Progress and Status reports

Karen,

Since I was puzzled by the distinction you drew in your last email about progress and status reports, I checked the contract. Please confirm my interpretation of Section 3.2.

I read it to require a "progress report," within 2 weeks of the end of each month. "Budget status shall also be provided," the section concludes.

That would mean, I believe, that we owe you a progress report by July 14, and it should include a status report on the budget.

Please let me know if I have misread this section or if you interpret it differently.

Tom

Karen Lynn-Dyson/EAC/GOV
07/08/2005 05:45 PM

To Carol A. Paquette/EAC/GOV@EAC
cc Juliet E. Thompson/EAC/GOV@EAC
bcc
Subject Re: Fw: Peer Review Group

Carol, Julie-

Yes, please do let me know on this. I think we need to have an e-mail exchange with Tom in which we clarify roles and responsibilities along with the proper channels of communication on this project.

For the time being I will give him the benefit of the doubt on this- the next time I might be a little less accommodating.

Thanks!

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Carol A. Paquette/EAC/GOV

Carol A. Paquette/EAC/GOV
07/08/2005 05:13 PM

To Juliet E. Thompson/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC
Subject Fw: Peer Review Group

Julie -

I don't remember saying much of anything but a few pleasantries to Tom in New York. Did you talk to him about this topic? I'm really at a loss on this. (Maybe I'm having an extended senior moment.)

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
----- Forwarded by Carol A. Paquette/EAC/GOV on 07/08/2005 05:07 PM -----

"Tom O'Neill"
[redacted]
07/08/2005 03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>
cc "Laura Williams"[redacted] "Weingart, John" <john.weingart@rutgers.edu>, "reed, Ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
Subject Peer Review Group

Carol,

After our discussion in New York, you asked me to put in writing our response to the EAC's suggestions for expanding the number and kinds of groups that would review and comment on our work. I hope after your review of this response, we will be able to quickly recruit a balanced Peer Review Group (PRG) and move ahead as the schedule in our work plan indicates. Attached is a revised list of the members we propose for appointment to the PRG. We will probably not be able to persuade all of them to serve, but the number and range of views included on the proposed list should ensure that the resulting group is well-balanced.

Tom

RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG

Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

1. Not sufficient conservative representation on the PRG

2. Create a "tiered process" of review in which:
   - A. The PRG will prepare a dispassionate analysis of the issues and draw some tentative conclusions.
   - B. PRG's analysis would be vetted by a defined/select group of local election officials.
   - C. A defined/select group of advocacy organizations would review the comments of the local election officials
   - D. Empanel a final focus group of local election officials, advocates and academics for an overall, interactive reaction to the analysis and recommendations.

Project Team Response

Creating three new committees to the review process to supplement the work of the Peer Review Group (PRG) is possible, but would add at least 8 weeks –and possibly 12 weeks-- to our completion of the guidance document on provisional voting. We believe this delay would risk limiting the value of this project for the 2006 election. In addition, the change would add at least $30,000 to the cost of our work. (See the attached table showing the possible effect on our work plan, and note the optimistic assumptions such as the ability to hold a hearing the week after Christmas.). If the same groups were to be engaged in reviewing our work on Voter ID, the time for that work would also have to be stretched at a similar increased cost.

This additional cost and the added time might be worthwhile. . . if the new layers of review were to produce a consensus on how to strengthen the research, sharpen the analysis, and increase the relevance of the Guidance Document. Our team concluded, however, that additional review groups were unlikely to achieve these results.

PRG focuses on quality of research

We believe that our research would be strengthened by a balanced Peer Review Group that will focus on the design of the research and our conduct of it. Based on the EAC's recommendation, we have revised the composition of the PRG to include additional, well-recognized authorities in the field whose perspective is generally agreed to be conservative.

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While using the PRG as a forum to reach consensus on the knotty issues involved does not appear practical, the EAC can benefit from the work of other groups in this regard. It is not necessary for this project to duplicate the deliberative processes of the Carter-Baker Commission, the Century Foundation and the Election Center. The EAC itself as well as the project team can get the benefit of these reports without duplicating this "policy evaluation board" structure as part of this contract.

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Karen reported that the Commissioners believed that the PRG would "prepare a dispassionate analysis of the issues and draw some tentative conclusions." As we see it, the PRG will neither analyze data nor draw conclusions, tentative or otherwise. Its members will review and comment on how the Project Team has designed and carried out the research. Analysis, conclusions and recommendations are the responsibility of the Project Team. We have all seen in the preface to books or articles a sentence or two that read something like this, "The author thanks Mr. X, Ms. Y, and Dr. Z for their review and comment on the manuscript. Their analysis has strengthened the work, but they are in no way responsible for errors or for my conclusions." That is the way we think about the Peer Review Group.

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PROPOSED MEMBERSJuly6.doc

Karen Lynn-Dyson/EAC/GOV
07/12/2005 05:08 PM

To "Tom O'Neill" [redacted]
cc "Paquette, Carol" <cpaquette@eac.gov>, "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura
bcc
Subject Re: Peer Review Group

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This will ensure, that as your primary point of contact, I have a record of all communication that has taken place between the contractor and the agency.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" [redacted]

"Tom O'Neill"
[redacted]
07/08/2005 03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>
cc "Laura Williams" [redacted], "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
Subject Peer Review Group

Carol,

After our discussion in New York, you asked me to put in writing our response to the EAC's suggestions for expanding the number and kinds of groups that would review and comment on our work. I hope after your review of this response, we will be able to quickly recruit a balanced Peer Review Group (PRG) and move ahead as the schedule in our work plan indicates. Attached is a revised list of the members we propose for appointment to the PRG. We will probably not be able to persuade all of them to serve, but the number and range of views included on the proposed list should ensure that the resulting group is well-balanced.

Tom

RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG
Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

1. Not sufficient conservative representation on the PRG

2. Create a "tiered process" of review in which:
   - A. The PRG will prepare a dispassionate analysis of the issues and draw some tentative conclusions.
   - B. PRG's analysis would be vetted by a defined/select group of local election officials.
   - C. A defined/select group of advocacy organizations would review the comments of the local election officials
   - D. Empanel a final focus group of local election officials, advocates and academics for an overall, interactive reaction to the analysis and recommendations.

Project Team Response
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PROPOSED MEMBERSJuly6.doc

REVISED
PROPOSED MEMBERS OF PEER REVIEW GROUP
July 6, 2005

Role of the Peer Review Group

Members of the Peer Review Group will review the research design for the project, including the survey of local election officials, the analysis of Voter ID regime on turnout, the state-by-state narrative of developments in provisional voting and voter identification, and the compilation and analysis of statutes, administrative regulations, and case law affecting provisional voting and voter identification. They will also review the report on Analysis and Alternatives. They may review the draft of the Preliminary Guidance Document before it goes to the Board of Advisors for comment.

Members of the group will be respected authorities in their fields and represent a range of opinions and perspectives, although their views on policy will be less important to the study than their views on the quality of the research on which policy recommendations are based.

Ideally, the group would meet once, but even that may not be possible to arrange given the tight time period for the project, the demanding schedules of the members, and their wide dispersal across the county. They will function largely by reviewing written work and making written comments on it. The timing of their involvement is indicated on the work plan.

R. Michael Alvarez, Ph.D.
Professor of Political Science
California Institute of Technology
rma@hss.caltech.edu
626-395-4422
Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College, his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

Guy-Uriel E. Charles
Associate Professor
School of Law
University of Minnesota
342 Mondale Hall
229-19th Avenue South
Minneapolis, MN 55455
612-626-9154
gcharles@umn.edu

Charles teaches and writes on election law, law and politics, and race. He received his B.A. degree in Political Science, *cum laude* from Spring Arbor University and his J.D. from the University of Michigan Law School, where he was Editor-in-Chief of the *Michigan Journal of Race & Law*. He is completing a PhD in political science from the University of Michigan.

Brad Clark
Professor of Law
George Washington University School of Law

Clark received his B.A. in Political Science from Florida State University and his J.D. from Columbia Law School in 1985. He served as a law clerk to the Judge Robert H. Bork on the US Court of Appeals and went on to clerk for Justice Antonin Scalia on the Supreme Court. He has been on the faculty at George Washington University Law School for 12 years, where he has taught Constitutional Law, Federal Courts, and Civil Procedure.

Pamela Susan Karlan
Montgomery Professor of Public Interest Law
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610
(650) 725-4851
karlan@stanford.edu

Formatted

Karlan's principal subjects include legal regulation of the political process. She earned her BA, MA, and JD at Yale University, and was previously a Professor at the University of Virginia. She serves on the California Fair Political Practices Commission and is a Cooperating Attorney with the NAACP Legal Defense and Education Fund. She has also been a lecturer at the FBI National Academy. Among her publications, she is a co-author of When Elections Go Bad: The Law of Democracy and the Presidential Election of 2000.

Martha E. Kropf, Ph.D.
Assistant Professor of Political Science
University of Missouri-Kansas City
816-235-5948; KropfM@umkc.edu
Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

Deleted: Deborah Goldberg, Ph.D¶
Program Director, Democracy Program¶
Brennan Center for Justice at NYU School of Law¶
161 Avenue Of The Americas, 12th Floor
New York, NY 10013
212-998-6730
Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.¶

Daniel H. Lowenstein
Professor of Law
School of Law
University of California, Los Angeles
Box 951476,
Los Angeles, CA 90095-1476
(310) 825-4841

Among other courses, Lowenstein teaches Election Law. His textbook, *Election Law* has become a standard in the field. He earned his A.B. at Yale and his LL.B. at Harvard. While working for California's Secretary of State he was the main drafter of the *Political Reform Act* in 1971.He was the first chair of the Fair Political Practices Commission. He has served on the national governing board of Common Cause. He has written on such topics as campaign finance, redistricting, bribery, initiative elections, and political parties.

John F. Manning
Professor
Harvard Law School

Now at Harvard, Manning was appointed Assistant Attorney General for the Office of Legal Counsel by President Bush in 2001. He had been Professor of Law at Columbia Law School. Had had served as Assistant to the Solicitor General of the United States and was an Attorney-Adviser in the Office of Legal Counsel at the Department of Justice during the administrations of President George H. W. Bush and President Reagan. He is a graduate of Harvard College and Harvard Law School.

Tim Storey
Program Principal
Legislative Management Program
National Conference of State Legislatures
7700 East First Place
Denver, CO 80230
303-364-7700
or
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
202-624-5400

Peter G. Veniero, Esq.
Counsel
Sills, Cummis, Epstein and Gross, PC
One Riverfront Plaza
Newark, New Jersey 07102
Tel: 973- 643-7000

Verniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

Plus one or two former, senior election officials to be suggested by the EAC

Deleted: Wade Henderson, Esq.¶
Executive Director¶
Leadership Conference on Civil Rights ¶
1629 K Street, NW, 10th Floor¶
Washington, DC 20006¶
Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU. ¶
¶
Kay Maxwell¶
President¶
League of Women Voters of the U.S.¶
1730 M Street NW, Suite 1000¶
Washington, DC 20036-4508 ¶
202-429-1965¶
Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project. ¶

Deleted: ¶

Karen Lynn-Dyson/EAC/GOV
07/13/2005 11:04 AM

To "Tom O'neill" [redacted]
cc Carol A. Paquette/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject RE: Peer Review Group

Tom-

I will take up the matter of next steps with the Peer Review Group, with Tom Wilkey, the EAC Executive Director ASAP.

I will have an answer regarding the EAC's suggested next steps on how to proceed on this matter as quickly as possible.

Regards-

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <[redacted]

"Tom O'neill"
<[redacted]
07/12/2005 07:17 PM

To cpaquette@eac.gov
cc ireed@rutgers.edu, john.weingart@rutgers.edu, klynndyson@eac.gov, [redacted] foley.33@osu.edu, rmandel@rci.rutgers.edu
Subject RE: Peer Review Group

Carol,

I sent you the email on the Peer Review Group because you asked me to. When we discussed the issue in New York, you told me to send to you in writing our response to the Commission's suggestions for a new, more elaborate review process. I believe I copied Karen on that email.

Learning now, almost a week later, that you have taken no action is disheartening. As you know, our schedule is tight, and we need the counsel the Peer Review Group can provide. I hope, therefore, that Karen will take immediate action to resolve the situation so we can begin to recruit the review group in time to assure the quality of the resource design.

Tom O'Neill

-----Original Message-----
From: cpaquette@eac.gov [mailto:cpaquette@eac.gov]
Sent: Tuesday, July 12, 2005 6:37 PM
To: klynndyson@eac.gov
Cc: Foley, Ned; reed, ingrid; Weingart, John; Laura Williams; Mandel, Ruth; Tom O'Neill
Subject: Re: Peer Review Group

Karen, Tom -

I am not taking any action on the email Tom sent a few days ago regarding the Peer Review Group because the Eagleton project is not my responsibility. As I indicated earlier to Karen, I didn't know why this was sent to me since Karen is the Project Manager. I endorse her comment below regarding the need for including her in all correspondence with anyone at the EAC regarding the project.

When I was the Interim Executive Director it was part of my job to stay on top of all EAC project work. I now have other responsibilities at the EAC, and while I am happy to continue involvement in other projects for continuity and transition purposes as needed, that needs to be very limited. My involvement with the Eagleton work has only been from the contracting perspective, and that is the only continuing role I have. Any substantive project activities have to be taken up with Karen.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV
07/12/2005 05:08 PM

To "Tom O'Neill" [redacted]
cc "Paquette, Carol" <cpaquette@eac.gov>, "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams" [redacted] "Mandel, Ruth" <rmandel@rci.rutgers.edu>
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<[redacted]

07/08/2005 03:41 PM

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RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG

Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

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Karen Lynn-Dyson/EAC/GOV
07/15/2005 02:48 PM

To "Tom O'neill" <[redacted]
cc Thomas R. Wilkey/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC
bcc
Subject Re:

Tom-

I don't anticipate a problem with this re-allocation of funds. I will, however, check with our financial officer to be certain that such a re-allocation is permissible.

I will let you know shortly.

Regards-

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]>

"Tom O'neill"
[redacted]
07/14/2005 02:31 PM

To klynndyson@eac.gov
cc arapp@rci.rutgers.edu
Subject

Karen:

As we discussed on Tuesday morning in the teleconference, we would like to reallocate within the current budget $9,500 to the survey of local election officials. This will raise the budget for the survey to $24,500 from $15,000.

The additional funding will permit us to double the sample of local election officials from 200 to 400. The larger sample will allow more detailed comparisons between the experience of local election officials in states that offered some form of provisional ballot before HAVA and those that did not. This comparison is a topic of special interest identified in the contract.

The increase of $9,500 is based on an estimate made by SRBI, the contractor that will actually administer the interviews. I can furnish you with a copy of the estimate if you like. We believe the additional funds will improve significantly our ability to provide relevant analysis to EAC on this important issue.

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV
07/15/2005 03:21 PM

To [redacted]
cc Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: Composition of the Eagleton Peer Review Group

Tom-

This e-mail will reiterate our conversation of this morning.

After a close review of your e-mail of July 12th, EAC staff determined that it is appropriate for the Eagleton/Moritz team to proceed with the composition of its Peer Review Group as it deems suitable and necessary. EAC staff will assume that your team is satisfied that it has created a politically and ideologically balanced group to review your work.

EAC staff, the Commissioners, the Advisory and Standards Boards will, we are certain, have opportunities to review the findings and analyses that your team creates, at critical junctures during the process.

Enjoy your weekend.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
07/15/2005 03:25 PM

To [redacted]
cc
bcc
Subject Re: Invitation to Tom Wilkey

Tom-

Thanks for sharing this information with me and for keeping me apprised of the activities, interests and concerns of the team.

FYI-
I'm not certain who is on board to attend the meeting at Cal Tech; Ruth and the others may wish to find a time that Tom would be available to meet with folks then.

Regards-

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]>

"Tom O'neill"
[redacted]>
07/15/2005 02:39 PM

To klynndyson@eac.gov
cc
Subject Invitation to Tom Wilkey

Karen,

For your information, Ruth Mandel, Director of the Eagleton Institute of Politics, sent the letter below to Tom Wilkey this afternoon. It is an invitation for him to meet with the project team in August at Rutgers.

Have a good weekend.

Tom O'Neill

I'm writing on behalf of my colleagues at the Eagleton Institute of Politics to send congratulations on your appointment as Executive Director of the Election Assistance Commission and to extend a warm invitation for you to visit the Institute to meet our research team. The Eagleton Institute and our partners at the Moritz College of Law are delighted to have been selected to provide research services to the EAC for developing guidance to the states on provisional voting and voter identification requirements.

The Eagleton and Moritz team conducting the research and analysis would appreciate an opportunity to discuss the project with you so that we can gain a full understanding of your perspective on this work and make our research as useful as possible for you, the EAC, the states, and eventually the voters.

I understand that you continue to travel between New York and Washington, which would make a visit to Eagleton simple to arrange. Since the Rutgers campus in New Brunswick is not far from the Metropark Amtrak station, we could easily pick you up at Metropark and return you at the end of the visit. Our Moritz partners would also attend.

The agenda for such a meeting could include a briefing on our progress, discussion of challenges to be met, and a conversation about your goals for this research. We believe that the earlier in the research process we can arrange to meet, the better for the project.

I hope you agree that a meeting in the near future would be useful, and that you like the idea of a visit to the research site. If so, we can search for convenient dates in the next few weeks, perhaps starting with the possibility that you would be available on August 12, 15, or 16.

We all look forward to continuing our work together on this worthwhile project.

Ruth B. Mandel

Director, The Eagleton Institute of Politics

Board of Governors Professor of Politics

Karen Lynn-Dyson/EAC/GOV
07/15/2005 03:53 PM

To "Tom O'neill" [redacted]
cc Diana Scott/EAC/GOV@EAC, Carol A. Paquette/EAC/GOV@EAC
bcc
Subject Re: Request for reallocation within existing budget

Tom-

EAC contract staff indicate that the reallocation you propose can occur and that all other such reallocations that are made from your project budget for this contract budget can be done at your own discretion.

From a contractual standpoint, EAC's only concern is that Eagleton is able to accomplish all of the activities and provide all of the deliverables that have been set forth in your contract.

Regards-

Karen Lynn-Dyson
Research manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

07/15/2005 04:16 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC
cc Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC
bcc
Subject Fw: Eagleton Institute June 2005 Progress Report

Should any of you all need or want a sense of what Eagleton has done on provisional voting and voter identification in preparation for the Cal Tech meeting, attached is their June monthly report.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 07/15/2005 03:57 PM -----

"Lauren Vincelli" <Vincelli@rutgers.edu>

07/14/2005 04:43 PM

Please respond to Vincelli@rutgers.edu

To klynndyson@eac.gov
cc "'Tom O'neill'" [redacted], john.weingart@rutgers.edu
Subject Eagleton Institute June 2005 Progress Report

Ms. Dyson,

Attached please find the June 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please direct them to Tom O'Neill at: [redacted]

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,
Lauren Vincelli

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237

Fax: (732) 932-1551

ProgressReport_JUNE2005_EagletonInst.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to The EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
JUNE 2005

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.4
- Voter Identification Requirements
    - Task 3.10
    - Task 3.11
- Project Management
    - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from the start of the project on May 26 through June 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The objective of the contract is to assist the EAC in the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements on which to base policy recommendations as guidance for the states in the conduct of the 2006 elections. The work has begun well, thanks to the clarity of the EAC's expectations and the strong collaboration by the scholars and staff at the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, and the Moritz College of Law at the Ohio State University.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: tom_oneill@verizon.net or (908) 794-1030.

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. The work plan provides for two months to complete Task 3.4. Work on this task is on schedule.

Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team includes faculty, an executive administrator, a reference librarian, and several research assistants. It began immediately to compile statutes, case law and administrative procedures regarding Provisional Voting. The team has created a 50 state chart to summarize information on provisional voting. Categories for which state statutes and administrative procedures are being reviewed include:

- *When did the state create a system compliant with the HAVA provisional ballot requirements?*
- *Who may be eligible to cast a provisional ballot?* and
- *What is the process for discovering whether your provisional ballot was counted in the election?*

Progress: Initial research for 27 states, including the collection of provisional voting statutes is complete. This phase of the work is on schedule for completion by August 1. By the beginning of the week of July 11, Moritz's full time research assistant will move from voter identification research to gathering and organizing case law on provisional voting.

Challenges: Identifying the relevant statutes has been challenging; states use different terminology to codify provisional voting issues. Many states have scattered election law provisions throughout their codes. This variation from state to state makes creating a snap-shot view across states a challenge. The team is meeting this challenge, and the work is on schedule.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team is constructing a narrative description for each state of the 50 states and the District of Columbia. It is also surveying a stratified random sample of county election officials to improve its understanding of actual practice in administering provisional voting.

Description: To construct the narratives, a researcher is examining newspaper accounts, state websites, and reports from third-party organizations to determine what information is publicly available about these issues during the 2004 election. To organize the information derived from this examination, we are creating an information system that will make it possible to catalog the basic information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combine it with Moritz's collection and analysis of statutes, regulations and litigation. The information system will make it possible to provide answers to such topics of particular interest listed in the contract as: How did preparation for provisional voting vary between states that had some form of provisional voting and those that did not?" and "How did litigation affect implementation?"

Progress: The researcher in this area has identified sources of information for every state and the collection process is well underway. Verified database entries for 24 states are complete, as are two state narrative summaries. This phase of the research is on schedule for completion by the end of July.

Challenges: A key challenge is determining just what states actually did in practice to verify and count provisional ballots. A second challenge has been determining the variations in policy within individual states. We are still wrestling with resolving this challenge, but the work is on schedule.

Work Plan: By the end of the July, the compilation of statutes, administrative regulations, and litigation will be complete and ready to be combined with the state-by-state narrative compiled by Eagleton. That will form the basis for the analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

SURVEY OF COUNTY ELECTION OFFICIALS

This survey will help the research team understand more about such key topics of interest as:

- "How did the experience of provisional voting vary between states that previously had some form of provisional voting and those where provisional voting was new in 2004?"
- "Did state and local processes provide for consistent counting of provisional ballots?"
- "Did local officials have a clear understanding of how to implement provisional voting?"

The survey results will supplement the information on these topics from the compilation of statutes, regulations and cases and from the narrative we are constructing for each state.

Description: The Center for Public Interest Polling (CPIP) at Eagleton is conducting a national survey of county election officials to measure several aspects of provisional voting. The survey is designed to determine the following factors related to provisional voting at the county level:

- The content and quality of instructions provided to county officials by the states
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting

Progress: The survey instrument is complete. CPIP has compiled a list of election officials at the county level and at the municipal or regional level for states that do not assign the election responsibility to counties. It was forwarded to the call center, Schulman, Ronca & Bucuvalas Inc., (SRBI) the week of July 5, 2005. A sample will be drawn the week of July 12. Human Subjects Approval from Rutgers University was granted July 12. Pre-notification letters will be sent to election officials around July 12-13, 2005. The EAC has reviewed a draft of this letter, which we have now revised to make clear that the survey will increase our understanding of the provisional voting process, but is not being conducted on behalf of the EAC.

Challenges: We made special efforts to expedite Human Subject Approval to meet the schedule in the work plan. In the absence of an existing, reliable database of local election officials, we had to create one especially for this project. In order to provide a valid comparison between the states new to provisional voting with those that previously had some form of provisional ballot we doubled the sample size from 200 to 400. This increase will require an increase in the budget for the survey from $15,000 to about $24,000. We intend to reallocate costs within the existing budget to make this improvement possible, and will submit a letter describing the reallocation to the EAC in mid-July.

The sample has been, and will continue to represent the biggest challenge in this survey. Compiling the sample required substantial coordination and research to determine the accuracy of the identity and contact information for potential respondents. The difficulty in determining the appropriate contact is attributed to variation in county election officials' titles, jurisdiction types, and state and county election structures across the country. In addition to the potential pitfalls of reaching the appropriate county official, another factor in actually making contact with this special population will be dependent upon the hours that they keep, and may be hindered by the summer season.

Work Plan: This questionnaire will be pre-tested by July 15, and will field July 18 through August 5, 2005. This is somewhat later than projected in the revised work plan, but the information will arrive in time to be considered in drafting the analysis and alternatives document required under Task 3.5.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have made substantial progress in the first two tasks, which constitute the information-gathering phase of the work on Voter ID. The research of Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: A team of Election Law@Moritz faculty, executive administrator, a reference librarian, and several research assistants is compiling statutes on Voter Identification, and providing a summarized analysis of this research.

Progress: The Moritz team has created a 50-state chart to record data on voter identification. Categories for which state statutes and administrative regulations are being reviewed include: "*Who is required to present ID*", "*Types of ID required*", and "*Consequences of having no ID*". We have completed the initial research for 45 states and have collected the voter identification statutes for those states. An *Election Law@Moritz* Fellow is conducting an academic literature review on voter identification. This literature review will help shape the analytical framework that will guide us when the compendium of statutes and administrative regulations is complete.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Projections: At the current rate, a draft of the voter identification chart should be complete on schedule, by the end of July. Work on the literature review will continue into August, but will be available to inform the analysis of alternative approaches for voter identification called for by Task 3.12 of the contract.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter in the states; and second, estimating the effect on turnout of voter id requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. This work is on schedule to be completed by the end of July. The next key milestones will be the completion of the state database and drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. Analysis on the county-level will enable us to estimate the influence of ID requirements on various age groups, races, ethnicities and gender groups. We are compiling data from both the 2000 and 2004 Presidential elections to measure the effect that changes in ID requirements may have had on voter turnout through two national election cycles.

Progress: The structure of the database is complete. It contains demographic information from the Census, and turnout data from various sources. The researcher assigned to this task is devising the syntax that will be required to run the statistics when the dataset is complete. The methodology for this part of the study is complete, and the actual data collection will soon be finished.

Projection: We are waiting for the Census Bureau to release the 2004 County Demographic Estimates. We have ordered and await the arrival of 2 datasets that contain voter turnout and voter registration numbers on the county-level for both the 2000 and 2004 elections. Once these two sources of information are received, the researcher will insert this information into the existing database, clean up the dataset, and begin to run the statistics. By that point, the researcher will have separated the states into various ID-requirement groupings that have been determined by the team, which will require coordination with several other parts of the study. This work is on schedule. By the end of July, the researcher should have county-level and state-level statistics on the impact of each ID system upon turnout, analyzed through various demographic features on the county-level.

Task 3.11 Public meeting on Voter Identification Requirements

Description: We are working closely with EAC staff, particularly the General Counsel, to plan a half day public meeting on Voter ID requirements. Presentations at the meeting will form an important part of the information we are compiling about Voter ID requirements and the strengths and shortcomings of a range of alternative approaches.

Progress: We have recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we have recommended that one panel include legislators on opposite sides of the issue from two different states. Our research identified Mississippi and Wisconsin as two states to focus on, and we have recommended specific legislators from each. We have discussed with staff adding a researcher to the panel to put the debate in Wisconsin and Mississippi in either a national or historic context. We also recommended two researchers from contrasting points of view, to address the effects of Voter ID provisions under HAVA and broader provisions that are now the subject of national debate. EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA. We are awaiting a decision on our recommendations from EAC staff. We have no reason not to believe that the work is on schedule to be completed in time to organize a productive meeting on July 28.

Challenges: The date and location of this hearing has been changed twice since the beginning of the project. It was originally scheduled to take place in late June, but was rescheduled for July to allow the June hearing to focus on voting machine technology. The regular meeting was rescheduled for July 26 in Minneapolis, and was recently changed to July 28 in Pasadena. The changes in the scheduling of the July meeting have complicated our choice of panelists. More seriously, the changes mean that information from the hearing will not be available as early in the research process as contemplated in the contract. This timeframe will now require the team to summarize the hearing events at the same time that we are drafting the analysis and alternatives paper in early August.

Additionally, while our contract states that the "Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC," we have been asked only to make recommendations of topics and panelists, and the arrangements for the organization of the hearing are in other hands. This lack of clarity has caused some confusion and has delayed invitations to panelists. Thanks to frequent communication with members of the EAC, the process now seems to be working smoothly.

Projection: We believe the work is on schedule for completion in time to recruit the panelists for the July 28 hearing. Preparation of the hearing summary will likely be delayed because of the need to complete the analysis and alternatives paper.

PROJECT MANAGEMENT

Immediately after announcement of the award of the contract, Eagleton and Moritz began supplementing the core group that had prepared to proposal to building a highly qualified team to undertake the work. That team was in place by mid June, just a few weeks after the contract award.

As described in the proposal, the direction of the project is the responsibility of a five-person committee of faculty and staff from Eagleton and Moritz, chaired by Dr. Ruth Mandel, Director of the Eagleton Institute of Politics. Project Director Thomas O'Neill, a consultant to Eagleton, reports to this team and provides day-to-day guidance and coordination for the research. A weekly meeting of all the researchers engaged in the project if the primary means of coordinating the work. We have recently added an internal website to facilitate the review and revision of written materials.

Task 3.1 Update the Work Plan

The first task was completed on time with the submission of a detailed work plan and timeline. EAC staff requested that the work plan be supplemented with a Gantt chart created on MS Project, and we submitted that a few days later.

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

Progress: Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded, as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations should be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We answered with an analysis of the cost and time involved adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. We have not received response on this correspondence from the EAC, and the recruitment of the group is on hold.

Challenges: Communications on this issue with the EAC have not been clear or timely. The PRG should be in place now to comment on our research design while there is still time to refine it. While we are confident in the quality of our work, the wisdom and perspective of the outstanding candidates we have proposed for membership would strengthen the analysis and reports of our work.

Projections: We have effectively brought these challenges to the attention of EAC staff and look forward to a resolution speedy enough to allow recruitment of the PRG's members before the end of the month. If we meet that goal, the work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and a website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: The Moritz team has provided Eagleton staff with samples of the work that they are performing. An Eagleton staff member will be reviewing the content and formats of data from all supporting research and (re-)formatting once the work has been completed. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

Challenges: There are no evident challenges to this task at this time.

Projections: By the end of July 2005, much of the above referenced research will have been completed with respective materials and charts near completion. At that time, staff at Eagleton will review, combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: A trial Intranet for the project became available during the week of June 26. The Intranet will facilitate the exchange of information and collaboration among project participants.

Progress: After meetings with staff members of Rutgers University Computer Services (RUCS) and subsequent submission of a proposal by RUCS for technical support and hosting of the Intranet and the evaluation of alternative commercial services, the project team decided at its June 28th meeting to publish the Intranet through www.intranets.com, one of the leading commercial services. This decision was based on lower costs and earlier publication schedules than offered under the RUCS proposal. The Intranet services were evaluated during a free trial period, which demonstrated the ease of design and navigation of the proposed service.

Challenges: There are no immediate challenges to completion of this task by the timeframe specified below.

Projections: Design, testing and publication of initial content of the Intranet service is continuing, with all participants expected to be provided access by July 8, 2005.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to <u>actual expenses</u> that have been incurred during the reporting period. Given that the report reflects the first month of the project, several procedures for payment of subcontractors on the project were initiated. Expenses related to those members of the team are not reflected in this report because they have not yet been incurred.

Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV
07/19/2005 09:56 AM

To Juliet E. Thompson/EAC/GOV@EAC
cc
bcc Thomas R. Wilkey/EAC/GOV@EAC
Subject Two items

Hi-

Two items, one professional, one social:

1. By contract, Eagleton is to arrange a public meeting to receive public comment on the draft guidance for provisional voting they have helped draft for the EAC. Could you let me know what work they have performed for the EAC in preparation for next week's public meeting on provisional voting? Could you also let me know how, if at all, you envision the presentations from next week's meeting informing Eagleton's work and EAC's preparation of guidance on provisional voting?

Thanks

2. Tomorrow I'm going to go to Brooke Rental in Vienna to order the table and chairs for the EAC picnic. How many tables and chairs to you want me to order? Also, let me know the precise date, time and location to where I should have the items delivered. Can you think of anything else you'd like me to order from them? (e.g. tablecloths, large containers to hold cold beverages, disco dancing balls, tacky champagne fountains, etc.)

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
07/20/2005 12:36 PM

To Joseph D. Hardy/EAC/GOV@EAC
cc
bcc
Subject Fw: Eagleton Institute June 2005 Progress Report

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 07/20/2005 12:34 PM -----

"Lauren Vincelli"
<Vincelli@rutgers.edu>
07/14/2005 04:43 PM
Please respond to
Vincelli@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'neill" [redacted]
john.weingart@rutgers.edu
Subject Eagleton Institute June 2005 Progress Report

Ms. Dyson,

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The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,
Lauren Vincelli

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551

ProgressReport_JUNE2005_EagletonInst.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to The EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
JUNE 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

July 14, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.4
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The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: tom_oneill@verizon.net or (908) 794-1030.

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. The work plan provides for two months to complete Task 3.4. Work on this task is on schedule.

Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team includes faculty, an executive administrator, a reference librarian, and several research assistants. It began immediately to compile statutes, case law and administrative procedures regarding Provisional Voting. The team has created a 50 state chart to summarize information on provisional voting. Categories for which state statutes and administrative procedures are being reviewed include:

- *When did the state create a system compliant with the HAVA provisional ballot requirements?*
- *Who may be eligible to cast a provisional ballot?* and
- *What is the process for discovering whether your provisional ballot was counted in the election?*

Progress: Initial research for 27 states, including the collection of provisional voting statutes is complete. This phase of the work is on schedule for completion by August 1. By the beginning of the week of July 11, Moritz's full time research assistant will move from voter identification research to gathering and organizing case law on provisional voting.

Challenges: Identifying the relevant statutes has been challenging; states use different terminology to codify provisional voting issues. Many states have scattered election law provisions throughout their codes. This variation from state to state makes creating a snap-shot view across states a challenge. The team is meeting this challenge, and the work is on schedule.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team is constructing a narrative description for each state of the 50 states and the District of Columbia. It is also surveying a stratified random sample of county election officials to improve its understanding of actual practice in administering provisional voting.

Description: To construct the narratives, a researcher is examining newspaper accounts, state websites, and reports from third-party organizations to determine what information is publicly available about these issues during the 2004 election. To organize the information derived from this examination, we are creating an information system that will make it possible to catalog the basic information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combine it with Moritz's collection and analysis of statutes, regulations and litigation. The information system will make it possible to provide answers to such topics of particular interest listed in the contract as: How did preparation for provisional voting vary between states that had some form of provisional voting and those that did not?" and "How did litigation affect implementation?"

Progress: The researcher in this area has identified sources of information for every state and the collection process is well underway. Verified database entries for 24 states are complete, as are two state narrative summaries. This phase of the research is on schedule for completion by the end of July.

Challenges: A key challenge is determining just what states actually did in practice to verify and count provisional ballots. A second challenge has been determining the variations in policy within individual states. We are still wrestling with resolving this challenge, but the work is on schedule.

Work Plan: By the end of the July, the compilation of statutes, administrative regulations, and litigation will be complete and ready to be combined with the state-by-state narrative compiled by Eagleton. That will form the basis for the analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

SURVEY OF COUNTY ELECTION OFFICIALS

This survey will help the research team understand more about such key topics of interest as:

- "How did the experience of provisional voting vary between states that previously had some form of provisional voting and those where provisional voting was new in 2004?"
- "Did state and local processes provide for consistent counting of provisional ballots?"
- "Did local officials have a clear understanding of how to implement provisional voting?"

The survey results will supplement the information on these topics from the compilation of statutes, regulations and cases and from the narrative we are constructing for each state.

Description: The Center for Public Interest Polling (CPIP) at Eagleton is conducting a national survey of county election officials to measure several aspects of provisional voting. The survey is designed to determine the following factors related to provisional voting at the county level:

- The content and quality of instructions provided to county officials by the states
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting

Progress: The survey instrument is complete. CPIP has compiled a list of election officials at the county level and at the municipal or regional level for states that do not assign the election responsibility to counties. It was forwarded to the call center, Schulman, Ronca & Bucuvalas Inc., (SRBI) the week of July 5, 2005. A sample will be drawn the week of July 12. Human Subjects Approval from Rutgers University was granted July 12. Pre-notification letters will be sent to election officials around July 12-13, 2005. The EAC has reviewed a draft of this letter, which we have now revised to make clear that the survey will increase our understanding of the provisional voting process, but is not being conducted on behalf of the EAC.

Challenges: We made special efforts to expedite Human Subject Approval to meet the schedule in the work plan. In the absence of an existing, reliable database of local election officials, we had to create one especially for this project. In order to provide a valid comparison between the states new to provisional voting with those that previously had some form of provisional ballot we doubled the sample size from 200 to 400. This increase will require an increase in the budget for the survey from $15,000 to about $24,000. We intend to reallocate costs within the existing budget to make this improvement possible, and will submit a letter describing the reallocation to the EAC in mid-July.

The sample has been, and will continue to represent the biggest challenge in this survey. Compiling the sample required substantial coordination and research to determine the accuracy of the identity and contact information for potential respondents. The difficulty in determining the appropriate contact is attributed to variation in county election officials' titles, jurisdiction types, and state and county election structures across the country. In addition to the potential pitfalls of reaching the appropriate county official, another factor in actually making contact with this special population will be dependent upon the hours that they keep, and may be hindered by the summer season.

Work Plan: This questionnaire will be pre-tested by July 15, and will field July 18 through August 5, 2005. This is somewhat later than projected in the revised work plan, but the information will arrive in time to be considered in drafting the analysis and alternatives document required under Task 3.5.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have made substantial progress in the first two tasks, which constitute the information-gathering phase of the work on Voter ID. The research of Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: A team of Election Law@Moritz faculty, executive administrator, a reference librarian, and several research assistants is compiling statutes on Voter Identification, and providing a summarized analysis of this research.

Progress: The Moritz team has created a 50-state chart to record data on voter identification. Categories for which state statutes and administrative regulations are being reviewed include: *"Who is required to present ID"*, *"Types of ID required"*, and *"Consequences of having no ID"*. We have completed the initial research for 45 states and have collected the voter identification statutes for those states. An *Election Law@Moritz* Fellow is conducting an academic literature review on voter identification. This literature review will help shape the analytical framework that will guide us when the compendium of statutes and administrative regulations is complete.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Projections: At the current rate, a draft of the voter identification chart should be complete on schedule, by the end of July. Work on the literature review will continue into August, but will be available to inform the analysis of alternative approaches for voter identification called for by Task 3.12 of the contract.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter in the states; and second, estimating the effect on turnout of voter id requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. This work is on schedule to be completed by the end of July. The next key milestones will be the completion of the state database and drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. Analysis on the county-level will enable us to estimate the influence of ID requirements on various age groups, races, ethnicities and gender groups. We are compiling data from both the 2000 and 2004 Presidential elections to measure the effect that changes in ID requirements may have had on voter turnout through two national election cycles.

Progress: The structure of the database is complete. It contains demographic information from the Census, and turnout data from various sources. The researcher assigned to this task is devising the syntax that will be required to run the statistics when the dataset is complete. The methodology for this part of the study is complete, and the actual data collection will soon be finished.

Projection: We are waiting for the Census Bureau to release the 2004 County Demographic Estimates. We have ordered and await the arrival of 2 datasets that contain voter turnout and voter registration numbers on the county-level for both the 2000 and 2004 elections. Once these two sources of information are received, the researcher will insert this information into the existing database, clean up the dataset, and begin to run the statistics. By that point, the researcher will have separated the states into various ID-requirement groupings that have been determined by the team, which will require coordination with several other parts of the study. This work is on schedule. By the end of July, the researcher should have county-level and state-level statistics on the impact of each ID system upon turnout, analyzed through various demographic features on the county-level.

Task 3.11 Public meeting on Voter Identification Requirements

Description: We are working closely with EAC staff, particularly the General Counsel, to plan a half day public meeting on Voter ID requirements. Presentations at the meeting will form an important part of the information we are compiling about Voter ID requirements and the strengths and shortcomings of a range of alternative approaches.

Progress: We have recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we have recommended that one panel include legislators on opposite sides of the issue from two different states. Our research identified Mississippi and Wisconsin as two states to focus on, and we have recommended specific legislators from each. We have discussed with staff adding a researcher to the panel to put the debate in Wisconsin and Mississippi in either a national or historic context. We also recommended two researchers from contrasting points of view, to address the effects of Voter ID provisions under HAVA and broader provisions that are now the subject of national debate. EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA. We are awaiting a decision on our recommendations from EAC staff. We have no reason not to believe that the work is on schedule to be completed in time to organize a productive meeting on July 28.

Challenges: The date and location of this hearing has been changed twice since the beginning of the project. It was originally scheduled to take place in late June, but was rescheduled for July to allow the June hearing to focus on voting machine technology. The regular meeting was rescheduled for July 26 in Minneapolis, and was recently changed to July 28 in Pasadena. The changes in the scheduling of the July meeting have complicated our choice of panelists. More seriously, the changes mean that information from the hearing will not be available as early in the research process as contemplated in the contract. This timeframe will now require the team to summarize the hearing events at the same time that we are drafting the analysis and alternatives paper in early August.

Additionally, while our contract states that the "Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC," we have been asked only to make recommendations of topics and panelists, and the arrangements for the organization of the hearing are in other hands. This lack of clarity has caused some confusion and has delayed invitations to panelists. Thanks to frequent communication with members of the EAC, the process now seems to be working smoothly.

Projection: We believe the work is on schedule for completion in time to recruit the panelists for the July 28 hearing. Preparation of the hearing summary will likely be delayed because of the need to complete the analysis and alternatives paper.

PROJECT MANAGEMENT

Immediately after announcement of the award of the contract, Eagleton and Moritz began supplementing the core group that had prepared to proposal to building a highly qualified team to undertake the work. That team was in place by mid June, just a few weeks after the contract award.

As described in the proposal, the direction of the project is the responsibility of a five-person committee of faculty and staff from Eagleton and Moritz, chaired by Dr. Ruth Mandel, Director of the Eagleton Institute of Politics. Project Director Thomas O'Neill, a consultant to Eagleton, reports to this team and provides day-to-day guidance and coordination for the research. A weekly meeting of all the researchers engaged in the project if the primary means of coordinating the work. We have recently added an internal website to facilitate the review and revision of written materials.

Task 3.1 Update the Work Plan

The first task was completed on time with the submission of a detailed work plan and timeline. EAC staff requested that the work plan be supplemented with a Gantt chart created on MS Project, and we submitted that a few days later.

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

Progress: Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded, as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations should be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We answered with an analysis of the cost and time involved adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. We have not received response on this correspondence from the EAC, and the recruitment of the group is on hold.

Challenges: Communications on this issue with the EAC have not been clear or timely. The PRG should be in place now to comment on our research design while there is still time to refine it. While we are confident in the quality of our work, the wisdom and perspective of the outstanding candidates we have proposed for membership would strengthen the analysis and reports of our work.

Projections: We have effectively brought these challenges to the attention of EAC staff and look forward to a resolution speedy enough to allow recruitment of the PRG's members before the end of the month. If we meet that goal, the work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and a website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: The Moritz team has provided Eagleton staff with samples of the work that they are performing. An Eagleton staff member will be reviewing the content and formats of data from all supporting research and (re-)formatting once the work has been completed. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

Challenges: There are no evident challenges to this task at this time.

Projections: By the end of July 2005, much of the above referenced research will have been completed with respective materials and charts near completion. At that time, staff at Eagleton will review, combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: A trial Intranet for the project became available during the week of June 26. The Intranet will facilitate the exchange of information and collaboration among project participants.

Progress: After meetings with staff members of Rutgers University Computer Services (RUCS) and subsequent submission of a proposal by RUCS for technical support and hosting of the Intranet and the evaluation of alternative commercial services, the project team decided at its June 28th meeting to publish the Intranet through www.intranets.com, one of the leading commercial services. This decision was based on lower costs and earlier publication schedules than offered under the RUCS proposal. The Intranet services were evaluated during a free trial period, which demonstrated the ease of design and navigation of the proposed service.

Challenges: There are no immediate challenges to completion of this task by the timeframe specified below.

Projections: Design, testing and publication of initial content of the Intranet service is continuing, with all participants expected to be provided access by July 8, 2005.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Given that the report reflects the first month of the project, several procedures for payment of subcontractors on the project were initiated. Expenses related to those members of the team are not reflected in this report because they have not yet been incurred.

Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV

07/23/2005 07:01 PM

To [redacted]

cc

bcc

Subject Re:

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: "Tom O'neill" [[redacted]]
Sent: 07/19/2005 02:31 PM
To: Karen Lynn-Dyson
Cc: arapp@rci.rutgers.edu

Karen:

As we discussed on Tuesday morning in the teleconference, we would like to reallocate within the current budget $9,500 to the survey of local election officials. This will raise the budget for the survey to $24,500 from $15,000.

The additional funding will permit us to double the sample of local election officials from 200 to 400. The larger sample will allow more detailed comparisons between the experience of local election officials in states that offered some form of provisional ballot before HAVA and those that did not. This comparison is a topic of special interest identified in the contract.

The increase of $9,500 is based on an estimate made by SRBI, the contractor that will actually administer the interviews. I can furnish you with a copy of the estimate if you like. We believe the additional funds will improve significantly our ability to provide relevant analysis to EAC on this important issue.

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV

07/29/2005 01:54 PM

To "Tom O'neill" [redacted]

cc

bcc

Subject Re: Meeting with EAC

W ill check calendars on Monday and will let you know

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: "Tom O'neill" [redacted]
Sent: 07/29/2005 01:32 PM
To: Karen Lynn-Dyson
Subject: RE: Meeting with EAC

Karen,

Thanks for the email. No need to resend the original email from Washington. I received that shortly after you sent it. That email let us know that EAC would not need the research on ballot design that Tom Wilkey suggested we undertake and that you asked us to submit a proposal for. But the ballot-design issue was only one of the two topics raised by my email to you. The other question concerned a date to meet with EAC staff to discuss the forthcoming draft of our Analysis and Alternatives paper and an outline for the Preliminary Guidance Document. From our conversation yesterday, I understand that August 26, the date suggested, will not work because of the EAC's travel schedule. Please let me know if August 30, 31 or September 1 are possible for a meeting between the project team and EAC in Washington. The meeting would require perhaps 2 hours.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, July 28, 2005 4:16 PM
To: Tom O'neill
Subject: Re: Meeting with EAC and Ballot Design

I'm sending another notr on this. Will send the original email when I return to dc.   Eac staff agree that. Such an explora tion of prvisional ballots and thjer design should not be undertaken with this

Karen Lynn-Dyson/EAC/GOV
08/01/2005 06:12 PM

To "Tom O'neill" [redacted]
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC
bcc Paul DeGregorio/EAC/GOV@EAC
Subject RE: Meeting with EAC

Tom-

I will be in touch shortly with possible dates in very late August or early September, when EAC staff might be available to meet with Eagleton to discuss the project's research results and next steps.

In the meantime, I thought it was important to follow up on the issues Vice Chair DeGregorio raised while we were in Pasadena.

To be certain that I have the latest information, could you send to me the final list of the Eagleton/Moritz Peer Review Group and the list of organizations that Eagleton will be contacting for input?

Regards-

Karen

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
01/13/2006 03:52 PM

To john.weingart@rutgers.edu
cc
bcc
Subject Re: No Cost Extension Request

John-

Thanks ever so much for all your work on this. As you can see, contracts are a bit of a different animal than grants.

Will incorporate this information into my materials, and recommend the extension of the contract to March. Still no word on the best practices document; you and Tom will be the first to know (smile).

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
01/13/2006 01:15 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Lucy Baruch" <baruch@rci.rutgers.edu>
Subject No Cost Extension Request

Karen - I am attaching a spreadsheet providing the information you have requested (Attachment 1), but I want to highlight a few points which may not be immediately self-evident.

First, the original budget (Attachment 2) we submitted to the EAC, dated March 22^nd , did not itemize personnel expenses by each person. In addition, when we actually began work two months after submitting that budget, we decided to reallocate more time to people within Eagleton and hire fewer outside hourlies.

Second, in the figures I sent you in late December we tried to account for all the expenses and projections but overlooked a few things including neglecting to include the honoraria for our peer review team. Hence, the figures we're now sending are different than what I sent in December.

Lastly, we originally discussed a no-cost extension through February, but since we don't yet have the EAC comments on our draft Provisional Voting material nor an estimate of when they are likely to be ready, I think it is prudent to extend the no-cost extension through March 31^st . We would still like to conclude by the end of February, but if you can approve the extension for another month we could avoid going through this process again if everything is not complete six weeks from now.

It is my understanding that Rutgers will soon be sending our December invoice. At this time, I would also like to request that we combine January and February an invoice the EAC once for that time period.

As you can see, we are currently projecting an ending balance of approximately $10,000. If additional expenses are incurred beyond what is currently projected, we're confident they will not exceed the original budget of $560,002.

Thanks and I look forward to hearing from you.

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Karen Lynn-Dyson/EAC/GOV
01/18/2006 05:08 PM

To [redacted]
cc john.weingart@rutgers.edu
bcc Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: December Progress Report

Tom and John-

You should be hearing from either Tom Wilkey, EAC Executive Director, or myself, very shortly.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

"Tom O'neill"
[redacted]
01/17/2006 02:19 PM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu
Subject December Progress Report

Karen,

Attached is our progress report for December. Still eager to learn the schedule for the completion of the review of our analysis and recommendations on provisional voting.

Tom O'Neill

Progress ReportDecemberTON.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
December 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

January 16, 2006

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
  - Task 3.7
  - Task 3.8
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from December 1 through December 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In December we continued to make progress in the research needed for the draft report on voter identification requirements. We completed a careful review of data on the effect of various voter id regimes on turnout and worked to reconcile that information other sources and identified the latest, most reliable information to use in the analysis.

We still await the EAC's comments on our Provisional Voting analysis paper, which included our recommendations to the EAC for best practices. Since the submission of our Provisional Voting report to the EAC on November 28, 2005, our efforts have been entirely aimed at the completion of the voter identification research. We have been advised that EAC will take several weeks to review and react to our final draft on provisional voting.

As a result of such unanticipated delays we have revised the schedule for the project. Early in this reporting period, we requested from EAC a no-cost extension of the contract through the end of February. At this point, we have extended the no-cost extension request through March, so that we will have adequate time to revise our report once we receive feedback from the EAC.

In the meantime, as we await a response from the EAC, we are moving ahead quickly on the statistical analysis of voter identification data and summarizing the legal research that was completed earlier. We are working with the Peer Review Group to arrange a date for it to comment on the draft of the Voter ID analysis and recommendations.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to [redacted]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. We await comments from EAC on the draft report.

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. That recommendation followed agreement by the EAC with that course of action. The submission of that report and recommendations, however, constitutes the document required under this task. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we await the EAC's decision on how to proceed.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is the principal focus of our research at this time.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: We have completed: the 50 state (plus D.C.) chart, the collection of voter identification statutes for all states and D.C., and summaries of the existing voter identification statutes. Moritz has completed its review of voter identification litigation and has summarized the results in a memo. Moritz and Eagleton have reviewed all research, clarified the categorization of that research on our charts, and reconciled the research categories used in the two different analyses.

Challenges: The biggest challenge in the reconciliation process is understanding the comparative strengths of different primary source materials. Despite the necessity this has created to reconcile conflicting data from time to time, the collaboration has strengthened the rigor of our efforts by shining a light on the raw data.

Work Plan: During January, we will continue our analysis of our voter identification research, and we will complete the memo summarizing the major litigation surrounding voter identification requirements. We will identify the most important issues and best practices in the area of voter identification, and to develop our voter identification document for the EAC.

RESEARCH EFFORTS

To complement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of

HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

In the upcoming month, Eagleton will continue to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification. The difficulty will be determining the 2004 status of the states, especially because most of this material is gathered from state websites which at this point have been updated since 2004.

VOTER ID AND TURNOUT ANALYSIS

The statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters, as projected, was completed during the month of December.

Description: We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. In November, we have analyzed both aggregate- and individual-level data to determine whether there is any relationship between voter turnout and the various forms of voter identification states require.

Progress: During December, the analysis was completed for two data sets: County-level data that includes registration and turnout rates for 2000 and 2004, as well as Census measures and indicators of the type of voter identification requirements that were in existence at the time of the 2004 presidential election. The second data set consists of the voter supplement to the November 2004 Current Population Survey. This data set allows for testing of the same hypotheses at the individual level. The findings from the aggregate data set suggest that voter ID requirements have their greatest effect at the registration stage, as opposed to the turnout stage. A number of control variables were added to the analysis and the results of these efforts will be summarized in our report.

Challenges: These analyses use hierarchical linear modeling. Because voter identification requirements vary by state, one must pay special attention to other, unseen state-level influences on the data. The models are difficult to run and interpret, so the analyses are time-consuming

Work Plan: We will draft the findings from the statistical analyses by the end of January. The report will tie these findings to the research findings summarized in the litigation memos to create our first draft Voter Identification report.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: During the month of December, Eagleton contacted the PRG Members to reschedule the potential conference call session for mid-February due to the delays in getting the EAC's feedback on our report. We have asked the PRG members to reserve a couple of dates in mid-February for a conference call meeting to review the Provisional Voting report with the EAC's comments and the first draft of our Voter Identification Report.

Challenges: No new challenges were encountered during December.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added. During December we rearranged the folders on the hard drive and created a master document detailing which folder each report, memo, or data source could be found in.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project December 1- December 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

Karen Lynn-Dyson/EAC/GOV

01/24/2006 11:13 AM

To Amie J. Sherrill/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
cc Tamar Nedzar/EAC/GOV@EAC
bcc
Subject Material related to the Eagleton no-cost extension

All-

Attached please find the documents necessary to complete the filing of the no-cost extension (minus the Standard Form 30, which Nicole has).

The packet should be prepared for the Chair's signature and completed **no later than Thursday** of this week.

Eagleton has been waiting for this for a month now, and apparently Rutgers is demanding the info (since the contract technically ended December 31).

Thanks for helping me push this through.

K

12-8-05Eagleton Memo.doc Attachment 1-EAC Eagleton Institute budget for no-cost extension-1.xls

Attachment 2-EAC Eagleton Institute Budget 3-22-05-1.xls Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
01/24/2006 12:50 PM

To john.weingart@rutgers.edu
cc
bcc
Subject Re: no-cost extension status

John-

The papers are now with the Chair (Paul DeGregorio) for his signature.
I have asked that the process be completed not later than Thursday.

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
01/25/2006 01:49 PM

To john.weingart@rutgers.edu, Tamar Nedzar/EAC/GOV@EAC
cc "Lucy Baruch" <baruch@rci.rutgers.edu>
bcc
Subject Re: no-cost extension

I believe this is an error, and in fact, should say March 31.

I'll check with the law clerk who is helping me usher this through.

Thank

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
01/25/2006 01:46 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Lucy Baruch" <baruch@rci.rutgers.edu>
Subject no-cost extension

Karen - I just received a fax of the no-cost extension request. The last line of section14 refers to a completion date of February 13. Is it possible to change that to the date we had requested, March 31? If the answer to that question will take some time, we could process this paper through the University (Our Office of Research and Sponsored Programs has to provide the requested signatures) and then process a subsequent page extending from Feb 13 to the end of March.

Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Karen Lynn-Dyson/EAC/GOV

02/06/2006 12:01 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC

bcc

Subject Discussion of Eagleton at Thursday's Commissioner's meeting?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
02/06/2006 12:25 PM

To john.weingart@rutgers.edu
cc
bcc
Subject Re: no-cost extension

John-

I assume the no-cost extension process is now completed.

I am told that review of your Best Practices document will be completed this week.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
02/06/2006 03:07 PM

To john.weingart@rutgers.edu
cc
bcc
Subject Re: no-cost extension

John-

Could I get a brief explanation of the request for the combined invoice?

I don't believe its a problem, but the contract does stipulate monthly invoices.

I'll check into this.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
02/10/2006 05:07 PM

To john.weingart@rutgers.edu
cc
bcc
Subject Re: signed contract amendment

Yes, I think that would be a good idea

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
02/16/2006 05:09 PM

To "Tom O'neill" [redacted]
cc arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu, ireed@rutgers.edu, "'Johanna Dobrich'"
bcc
Subject RE: January Progress Report

Shall we say February 28 at 3:00 PM?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <[redacted]>

"Tom O'neill"
<[redacted]
02/16/2006 03:33 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu, foley.33@osu.edu, [redacted]
Subject RE: January Progress Report

Karen, I'll survey the group about the best time for a conference call. The 24th does not look like a good time. We have a teleconference with the Peer Review Group on the Voter ID paper scheduled for Feb. 22, and therefore would be hard-pressed to review the précis of your comments in time for a discussion on the 24th. The next week would be more promising, perhaps Tuesday, Feb 28 in the afternoon.

We still plan to deliver the Voter ID paper to you the first week in March.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]

Karen Lynn-Dyson/EAC/GOV
02/21/2006 02:22 PM

To "Tom O'neill" <[redacted]
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Nicole
bcc
Subject Re: Meeting with EAC in March

Tom-

I will begin to poll the Commissioners to get a sense of when they might be available to do a "close out " meeting with Eagleton.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <[redacted]

"Tom O'neill"
<[redacted]>
02/21/2006 10:45 AM

To klynndyson@eac.gov
cc
Subject Meeting with EAC in March

Karen,

The Eagleton-Moritz team would like to schedule a meeting with the EAC in March. It would be the final substantive meeting on our contract, which expires at the end of March.

The agenda would include:

1. Brief the Commission on the principal findings and recommendations of the Voter ID research and hear questions and comments on that work.
2. Discuss the changes we made to the Provisional Voting paper as a result of comments and questions from the Commission.
3. Explore the Commission's intentions for the use of our work as recommendations for best practices or otherwise.

I believe the meeting should take place after you receive the Voter ID paper from us in the first week of March, and ideally after the Commission staff has had enough time for a preliminary review of it.

The earlier we could set a date for this meeting, the more key members of the team would be able to participate.

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV

02/28/2006 09:24 AM

To Adam Ambrogi/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC

cc Raymundo Martinez/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Final meeting with Eagleton

As you know Eagleton is finishing up their project and would like to give us a final report on it.

Are your Commissioners and Tom available to meet on any of the following days from 1:00-2:30:

March 23
March 29
March 30

Thanks
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/02/2006 11:35 AM

To [redacted]
cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
bcc
Subject Re: Meeting with EAC in March

Tom-

I'm going to ask our Research Assistant, Nicole Mortellito to try and work with our EAC Commissioner staff and with you to find a date and time for our close-out meeting.

I have run into a number of snags with schedules and have found that the 30th works for very few on this end.

Nicole, please work with Tom on dates which are either early on in March or the very first part of April.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/02/2006 11:57 AM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Re: Meeting with EAC in March

4 C's, Tom, Julie and myself.

So far the schedules of Tom and the 4C's are the problem
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Nicole Mortellito/CONTRACTOR/EAC/GOV

Nicole Mortellito/CONTRACTOR/EAC/GOV
03/02/2006 11:37 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: Meeting with EAC in March

Just so I'm not chasing loose ends on the EAC front....EAC staff attending the Eagleton close-out meeting are...

Please advise. Thank you!

Regards,

Nicole K. Mortellito
Research Assistant
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax

Karen Lynn-Dyson/EAC/GOV
03/02/2006 11:59 AM

To "[redacted]
cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
bcc
Subject RE: Meeting with EAC in March

I'll have Nicole double check on this.

I was under the impression from Ingrid that Eagleton's preference was March 30.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

"Tom O'neill"
[redacted]
03/02/2006 11:49 AM

To klynndyson@eac.gov
cc
Subject RE: Meeting with EAC in March

Karen,

Is March 23 now also off the table as apossible date?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, March 02, 2006 11:36 AM
To: [redacted]
Cc: nmortellito@eac.gov
Subject: Re: Meeting with EAC in March

Tom-

I'm going to ask our Research Assistant, Nicole Mortellito to try and work with our EAC Commissioner staff and with you to find a date and time for our close-out meeting.

I have run into a number of snags with schedules and have found that the 30th works for very few on this end.

Nicole, please work with Tom on dates which are either early on in March or the very first part of April.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

U.S. Election Assistance Commission
1225 New York Ave. - Suite 1100
Washington, DC 20005

DATE!!!!!!

EAC Advisory 2005-006: Provisional Voting and Identification Requirements

The U.S. Election Assistance Commission (EAC) has recently received an inquiry regarding whether a state may impose an identification requirement that would limit a potential voter's access to a provisional ballot to which he or she is otherwise entitled under Section 302 of the Help America Vote Act (HAVA) (42 U.S.C. §15482). After consideration of the matter, EAC has concluded that Section 302 of HAVA creates a voter right. Specifically, the section creates the right for a potential voter to utilize a provisional ballot in the event their name does not appear on the registration list or the voter's eligibility is challenged by an election official. While States may create voter identification standards that exceed those laid out in HAVA and effect whether a provisional ballot is counted, States may not take action that limits a voter's right to receive and submit a provisional ballot. In explaining this position, this advisory reviews the plain language of HAVA Section 302, examines the differences between traditional and provisional ballots and analyzes the implementation of provisional voting under HAVA Section 303(b). This advisory also addresses the impact of a state's authority to create stricter standards than prescribed by HAVA upon HAVA's provisional voting requirements.[1]

Plain Language of HAVA Section 302. The right to cast a provisional ballot is created in Section 302 of HAVA. Pursuant to HAVA, when an individual declares that he or she is a registered and eligible voter in a federal election, that individual "shall be permitted to cast a provisional ballot" if (1) their name does not appear on the official list of eligible voters or (2) "an election official asserts that the individual is not eligible to vote." (Section 302(a)). This right to receive a provisional ballot is contingent upon only one thing (per Section 302(a)(2)), the individual's execution of a written affirmation that he or she is both a registered and eligible voter for the election at issue.[2] See also, Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 574 (6th Cir. 2004). However, notwithstanding the above, HAVA goes on to recognize that the right to submit a provisional ballot constitutes neither a means to avoid State imposed voter eligibility requirements nor a vote. Instead, HAVA requires election officials at a polling place to

---

[1] The EAC is the Federal agency charged with the administration of HAVA. While the EAC does not have rulemaking authority in the area of provisional voting, HAVA does require the Commission to draft guidance to assist states in their implementation of HAVA's provisional voting requirements. Although EAC's administrative interpretations do not have the force of law associated with legislative rules, the Supreme Court has long held that the interpretations of agencies charged with the administration of a statute are to be given deferential treatment by Courts when faced with issues of statutory construction. York v. Secretary of Treasury, 774 F. 2d 417, 419 – 420 (10th Cir. 1985) (citing Compensation Commission of Alaska v. Aragon, 329 U.S. 143, 153 – 154 (1963)) See also Christian v. Harris County, 529 U.S. 576 (2000); Edelman v. Lynchburg College, 122 S. Ct. 1145 (2002).

[2] Moreover, a potential voter determined not to be eligible must be informed of their provisional voting rights per Section 302(a)(1) of HAVA.

transmit a provisional ballot (or information associated with the written affirmation) to appropriate election officials for verification. (Section 302(a)(4) of HAVA). These election officials ultimately determine the voter's eligibility based upon information presented to or gathered by it, in accordance with State law. In this way, the State determines whether any provisional ballot submitted will be counted as a vote. Id.

In simplest terms, provisional voting represents the right of an individual (whose eligibility to vote has been challenged), to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. See Sandusky County Democratic Party, 387 F.3d at 570 and Florida Democratic Party v. Hood, 342 F.Supp 1073, 1079-1080 (N.D. Fla. 2004). A provisional ballot does not represent a different way to vote, nor does it serve as a bypass to State laws governing voter eligibility. Rather, it is designed to prevent an individual from losing his or her right to vote due to the fact that a poll worker did not have all the information available or needed to accurately assess voter eligibility. Thus, based upon the plain language of Section 302(a) of HAVA, a challenge to an individual's eligibility to vote (such as a challenge based upon identification requirements) cannot serve as a bar to the receipt of a provisional ballot, because it is the election official's challenge that triggers the provisional ballot procedure in the first place. To hold otherwise would defeat the purpose of provisional voting. In the end, to understand this concept one must understand the differences between traditional and provisional ballots.

Traditional vs. Provisional Ballots. The nature and procedures associated with a provisional ballot are wholly distinct from those of a traditional ballot. Because of this fact, the two processes must be treated differently. While voter identification requirements may serve as a bar to the casting of a traditional ballot, they may not prevent the submission of a provisional ballot.

First, the nature and purpose of traditional and provisional ballots are essentially different. The purpose of a traditional ballot is to allow a confirmed, eligible voter to cast a vote. The purpose of a provisional ballot is to allow individuals whose voter eligibility is challenged to reserve the right to vote by memorializing both their intent to vote and their proposed vote. This is evident by the HAVA processes discussed above. The bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not. A traditional ballot is cast only after voter eligibility has been determined by the State. Hence, the moment it is cast, it becomes an individual's vote. On the other hand, the submission or casting of a provisional ballot is not a vote. Rather, it is a claim that the potential voter who submitted it has the right to vote and reserves that right. As the Sixth Circuit Court of Appeals stated:

> [T]he primary purpose of HAVA was to prevent on-the-spot denials of provisional ballots to voters deemed ineligible to vote by poll workers. Under HAVA, the only permissible requirement that may be imposed upon a would-be voter before permitting that voter to cast a provisional ballot is the affirmation contained in [42 U.S.C.] §15482(a): that the voter is a registered voter in the jurisdiction in which he or she desires to vote, and that the voter is eligible to vote in an election for federal office. Sandusky County Democratic Party, 387 F.3d at 574.

This goes to the very heart of provisional voting. If provisional voting is a right triggered by an election official's determination that an individual has not met a voter eligibility requirement, how can such a requirement also serve as a bar to that right? The concept of provisional voting works only if the right is always available when the application of voter eligibility requirements is in question.

Second, consistent with the differences in purpose between traditional and provisional ballots, the other major distinction between the two lies in the application of voter eligibility requirements. This difference is primarily one of procedural timing. States have the right to create voter eligibility requirements and these requirements must be applied to both traditional and provisional ballots. In casting a traditional ballot, one must meet all eligibility requirements prior to receiving the ballot. However, in the provisional process, the potential voter has already failed to meet these preliminary requirements and the application of State law must occur after the ballot has been received. State voter eligibility requirements should be applied after the provisional ballot and/or supporting affirmation has been transmitted pursuant to Section 302(a)(3) of HAVA. Provisional ballots are counted as votes only after election officials have determined that the individual can meet voter eligibility standards consistent with state law. Again, the purpose of the process is to allow election officials more time, so that they may have more perfect information when making a decision about voter eligibility. Provisional ballots are subject to the full effect of State law regarding the eligibility to vote and the opportunity the law provides provisional voters to supply additional information. Provisional ballots do not escape state or federal voter eligibility requirements, those provisional ballots that do not meet State standards will not be counted.

Provisional Voting Under HAVA Section 303(b). Congress provided an example of how provisional voting works by applying the right to a specific circumstance. Section 303(b)(2)(B) of HAVA, entitled *Fail-Safe Voting*, provides that when a first-time voter who registered by mail is required by HAVA Section 303(b) to show identification, that person must be given a provisional ballot if he or she fails to provide such identification at the polling place. This section is important as it clarifies Congressional intent regarding how provisional voting should function.

The *Fail-Safe Voting* provision of Section 303(b)(2)(B) grants clear insight into how provisional voting should be implemented. While Section 303(b) deals with a specific subset of voters (first-time voters who registered by mail), its application of Section 302(a) supports the concept that a provisional ballot must be given to a voter who is determined (at the polling place) not to meet voter identification requirements. A review of the section shows that in the one area where HAVA set a Federal voter identification requirement Congress made clear that an individual's failure to meet this eligibility requirement triggered the statute's provisional voting section. Congress saw no difference between an individual's failure to meet the voter identification requirements it issued in Section 303(b) and the failure to meet eligibility requirements which trigger provisional voting under Section 302. Section 303(b) makes it clear that Congress did not intend voter identification requirements to limit access to provisional voting. Instead, Congress viewed provisional voting as a right, or more specifically, as a fail-safe. The EAC strongly believes that HAVA provisions must be interpreted to bring about consistent and evenly applied results. In this case, if individuals who fail to meet Federal identification standards have the right to a provisional ballot, so must individuals who fail to meet similar State standards.

Stricter Eligibility Standards and Provisional Voting. HAVA specifically provides that States may create stricter voter eligibility standards than provided in HAVA.[3] Arizona's "Proposition 200" identification requirements are a prime example of this authority. However, the HAVA authority to create stricter eligibility standards does not grant the state authority to create standards that bar access to a provisional ballot. To interpret HAVA otherwise (i.e. allowing stricter state identification standards to bar access to provisional ballots) would render HAVA's provisional voting mandate (Section 302) void and meaningless. HAVA cannot be read to grant both (1) the right to a provisional ballot if an individual's voting eligibility is challenged by a State and, (2) the right of that State to deny an individual a provisional ballot if they do not meet voter eligibility standards. These concepts are mutually exclusive. HAVA cannot be interpreted to allow a State to create voter eligibility standards that bar the Section 302 right to cast a provisional ballot without nullifying the effect and intent of that provision. Any such interpretation of HAVA would run afoul of both HAVA Section 304 and longstanding principles of statutory construction.

First, HAVA notes in Section 304 that while States may create standards that are stricter that those established under HAVA, this authority is limited to the extent "such State requirements are not inconsistent with the Federal requirements under [HAVA]." Clearly, provisional voting is a requirement under HAVA. Section 302(a) notes that qualified individuals "**shall** be permitted to cast a provisional ballot." (Emphasis added). In this way, States may not create standards that are inconsistent or interfere with the provisional voting mandate.

Furthermore, long established principles of statutory construction further prohibit an interpretation of HAVA that would render any of its provisions meaningless. It is "'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" TRW Inc. v. Andrews, 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001), (quoting Duncan v. Walker, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)).

A Stricter Provisional Voting Standard. As discussed above, States' have the right to impose stricter requirements than those laid out in HAVA. The EAC has already made it clear, above, that a stricter voter eligibility requirement cannot be read to bar an individual's right to a provisional ballot. However, could a stricter requirement regarding provisional voting serve to limit access to such ballots? No. A stricter State requirement for provisional voting would be a standard that enhances a person's access to a provisional ballot. As the Sixth Circuit noted, "HAVA is quintessentially about being able to cast a provisional ballot." Sandusky County Democratic Party, 387 F.3d at 576. "HAVA's requirements 'are minimum requirements' permitting deviation from its provisions provided that such deviation is 'more strict than the requirements established under' HAVA **(in terms of encouraging provisional voting)**…." Id., (quoting 42 U.S.C. §15484, emphasis added). Thus, in terms of provisional voting, a stricter standard is one that serves to further encourage provisional voting. When passing laws affecting provisional voting, States must ensure that their provisions are consistent with HAVA or otherwise serve to further an individual's access to a provisional ballot. EAC concludes that any policy asserting that States may pass laws limiting access to provisional ballots conflicts with HAVA.

---

[3] See 42 U.S.C. §§15485 – 15485, entitled *Minimum Requirements* and *Methods of Implementation Left to Discretion of State*, respectively.

Conclusion. A state may not impose an identification requirement that would limit a potential voter's access to and submission of a provisional ballot. However, such requirements (when coupled with a state's provisional ballot procedures) may prevent a provisional ballot from being counted.

Gracia Hillman
Chair

Paul DeGregario
Vice Chairman

Ray Martinez III
Commissioner

Donetta Davidson
Commissioner

Karen Lynn-Dyson/EAC/GOV
09/22/2006 01:12 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc Peter Schulleri/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
bcc
Subject Re: Fw: Data request from provisional ballot report

Tom-

To clarify-

Would you like me to send Mike McDonald **all** of the following appendices from the Eagleton/Moritz report:

Appendix B: Relationship Between Time Allotted to Verify Provisional Ballots and the Level of Ballots that are Verified
Appendix C: Provisional Ballot Litigation by Issue
Appendix D: Provisional Ballot Litigation by State
Appendix E: State Summaries

Thanks for clarifying

K

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
08/28/2006 09:39 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
cc
Subject Fw: Data request from provisional ballot report

Guess we better agree on the contents of the letter to Eagleton SOON

Thomas R. Wilkey
Executive Director
US Election Assistance Commission

Karen Lynn-Dyson/EAC/GOV
10/02/2006 12:35 PM

To john.weingart@rutgers.edu
cc Bola Olu/EAC/GOV@EAC, Peter Schulleri/EAC/GOV@EAC
bcc Diana Scott/EAC/GOV@EAC
Subject Re: Eagleton/Moritz final invoices

Hi John-

I'm checking to see if you can contact your finance department to determine if EAC has received its final invoice on the Eagleton/Moritz study.

Our financial records show a balance on the contract of $2,910.77

I need to be able to tell our finance folks how this final balance is going to be handled.

Thanks, John.

Regards-

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
10/03/2006 12:43 PM

To john.weingart@rutgers.edu
cc Bola Olu/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Peter Schulleri/EAC/GOV@EAC
bcc
Subject Re: Eagleton/Moritz final invoices

Thanks for your follow-up on this, John.

I will pass this along to the EAC finance department so they may handle these remaining funds accordingly.

Regards-

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart" <john.weingart@rutgers.edu>
10/03/2006 11:57 AM
Please respond to john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
Subject Re: Eagleton/Moritz final invoices

Karen - The invoice your just received is final. The final invoice we received from Ohio State was less than we had anticipated so the remaining balance is for the EAC to use for other projects. Let me know if you need more information.

-- John Weingart, Associate Director

Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> Hi John-
>
> I'm checking to see if you can contact your finance department to
> determine if EAC has received its final invoice on the Eagleton/Moritz
> study.
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> Our financial records show a balance on the contract of $2,910.77
>
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> going to be handled.
>
> Thanks, John.
>
> Regards-
>
>
>
> Karen Lynn-Dyson
> Research Director
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
10/03/2006 01:33 PM

To john.weingart@rutgers.edu
cc
bcc
Subject Re: Eagleton/Moritz final invoices

Go ahead and give him a call later on this afternoon.

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
10/03/2006 01:12 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
Subject Re: Eagleton/Moritz final invoices

Karen - While we're writing, I had a call last week from Tom Wilkey saying he would get back to me in response to my letter by last Thursday. Is the best thing for me to call him or do you know if a response is in the works?

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

\>
\> Thanks for your follow-up on this, John.
\>
\> I will pass this along to the EAC finance department so they may
\> handle these remaining funds accordingly.
\>
\> Regards-
\>
\> Karen Lynn-Dyson
\> Research Director
\> U.S. Election Assistance Commission
\> 1225 New York Avenue , NW Suite 1100
\> Washington, DC 20005
\> tel:202-566-3123
\>
\>
\>

> *"John Weingart" <john.weingart@rutgers.edu>*
>
> 10/03/2006 11:57 AM
> Please respond to
> john.weingart@rutgers.edu
>
>
>
> To
> klynndyson@eac.gov
> cc
>
> Subject
> Re: Eagleton/Moritz final invoices
>
>
>
>
>
>
>
>
>
> Karen - The invoice your just received is final. The final invoice we
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> remaining balance is for the EAC to use for other projects. Let me know
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>
> -- John Weingart, Associate Director
>
> Eagleton Institute of Politics
> (732)932-9384, x.290
>
>
>
>
> klynndyson@eac.gov wrote:
>
> >
> > Hi John-
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> >
> > Thanks, John.
> >
> > Regards-
> >
> >
> >
> > Karen Lynn-Dyson
> > Research Director
> > U.S. Election Assistance Commission
> > 1225 New York Avenue , NW Suite 1100
> > Washington, DC 20005

> > tel:202-566-3123
>
>
>

Karen Lynn-Dyson/EAC/GOV
10/03/2006 04:48 PM

To Diana Scott/EAC/GOV@EAC
cc
bcc
Subject Re: Eagleton/Moritz final invoices

Yes, this money can be de-obligated

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Diana Scott/EAC/GOV

Diana Scott/EAC/GOV
10/03/2006 01:10 PM

To klynndyson@eac.gov@EAC
cc
Subject Re: Eagleton/Moritz final invoices

Karen,

I assume the the remaining $2,910.77 can be deobligated? Plz. confirm.

Diana M. Scott
Director of Administration
U.S. Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, DC 20005
(202) 566-3119 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
10/03/2006 12:43 PM

To john.weingart@rutgers.edu
cc Bola Olu/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Peter Schulleri/EAC/GOV@EAC
Subject Re: Eagleton/Moritz final invoices

Thanks for your follow-up on this, John.

I will pass this along to the EAC finance department so they may handle these remaining funds accordingly.

Regards-

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
10/03/2006 11:57 AM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
Subject Re: Eagleton/Moritz final invoices

Karen - The invoice your just received is final. The final invoice we received from Ohio State was less than we had anticipated so the remaining balance is for the EAC to use for other projects. Let me know if you need more information.

-- John Weingart, Associate Director

Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> Hi John-
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> Thanks, John.
>
> Regards-
>
>
>
> Karen Lynn-Dyson
> Research Director
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100

> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
10/03/2006 04:52 PM

To "Mike Alvarez" <rma@hss.caltech.edu>@GSAEXTERNAL
cc
bcc Jeannie Layson/EAC/GOV@EAC; twilkey@eac.gov
Subject Re:

Mike-

We are closer to releasing an EAC report on Provisional Voting.

To my knowledge, the EAC has not yet reached consensus on the Eagleton Voter ID report.

Regards-

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Mike Alvarez" <rma@hss.caltech.edu>

"Mike Alvarez"
<rma@hss.caltech.edu>
10/02/2006 10:44 PM

To klynndyson@eac.gov
cc
Subject

Hi -- hope all is well.

I've got a quick question for you. Vercellotti and Anderson
have put out for public distribution what looks to be their
work from their EAC report on voter identification
(http://moritzlaw.osu.edu/blogs/tokaji/voter%20id%20and%20turnout%20study.pdf
).
Given that this piece of their research project is
available, is the rest of their work available for public
distribution yet (as you know the VTP is having a conference
at the end of this week on voter identification and registration,
it would be nice to have access to the EAC research at the
conference, even at this late date).

--
****
R. Michael Alvarez (O)
626-395-4089
Professor of Political Science (F)
626-405-9841
Caltech/MIT Voting Technology Project
California Institute of Technology
Pasadena, CA 91125

rma@hss.caltech.edu

Contributor to Election Updates,
http://electionupdates.caltech.edu/blog.html
****

Karen Lynn-Dyson/EAC/GOV
10/04/2006 02:30 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc Sheila A. Banks/EAC/GOV@EAC, Peter Schulleri/EAC/GOV@EAC
bcc
Subject Re: Eagleton Response

Sheila and Peter-

Could you please confirm precisely which appendices from the Eagleton reports were sent to Tom Hicks and to Mike McDonald?

Many thanks

K

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
10/04/2006 03:02 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC
bcc Sheila A. Banks/EAC/GOV@EAC; Peter Schulleri/EAC/GOV@EAC
Subject Re: Eagleton Response

Tom-

As I believe you are aware, The Eagleton Institute 'sTim Vercellotti " Analysis of Effects of Voter ID Requirements on Turnout" was made public at the American Political Science Association meeting and was subsequently referenced on Dan Tokaji's blog.

We have sent the following:

To Mike McDonald:

Appendix C: Provisional Ballot Litigation by Issue

Appendix D: Provisional Ballot Litigation by State

To Tom Hicks:

Appendix A: Summary of Voter ID Requirements by State

Appendix B : Court Decisions and Litigation on Voter Identification and Related Issue Court Decisions

Appendix D: Annotated Bibliography on Voter Identification Issues

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
10/04/2006 01:50 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
Subject Eagleton Response

Karen;
Could you please put a list of items we have released and what has not been released on the two Eagleton Reports.

I would like to get back to John on this on want us ALL to be on the same page.
Thanks
Tom

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov

Karen Lynn-Dyson/EAC/GOV

12/05/2006 01:23 PM

To Matthew Masterson/EAC/GOV@EAC

cc Jeannie Layson/EAC/GOV@EAC

bcc

Subject Eagleton/ FOIA request

Matt-

I'm somewhat concerned that perhaps I haven't given Jeannie every piece of Eagleton documentation needed for the FOIA request.

I have literally hundreds of e-mails from Eagleton; the most germane of which are included in the big contract close-out binders (#2,#3).

However, I 'm not certain if I should print out all "300" of them.

If you are working on this project, let me know how I should proceed.

Thanks

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart"
<Johnwein@rci.rutgers.edu>
04/06/2006 09:14 PM
Please respond to
John.Weingart@rutgers.edu

To klynndyson@eac.gov
cc [redacted]
bcc
Subject Re: Eagleton/Moritz February Report

History: This message has been replied to.

Karen - I too have heard good reports from the meeting. What's your availability for a phone conversation on Wednesday or Thursday?

> Sorry to have missed you on Monday, John.
>
> I think all of the Commissioners found the sessions extremely helpful and are much clearer about the work that has been done on the Voter ID topic.
>
> Shall you Tom and I have a conversation early next week about next steps- specifically what you anticipate doing on your end to create final reports for both Voter ID and Provisional Voting and what additional feedback, if any, you'd like to get from the EAC prior to submitting these final reports?
>
> We have talked about the possibility of having you all present your final reports at our June public meeting; that idea is still under review, however.
>
> Look forward to hearing from you about a call sometime next week.
>
> Please be certain to thank all of the project staff for coming to DC and taking the time to meet with the Commissioners.
>
> Regards-
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

--
John Weingart, Associate Director
Eagleton Institute of Politics
(732) 932-9384, x.290

--
John Weingart, Associate Director
Eagleton Institute of Politics
(732) 932-9384, x.290

"John Weingart"
<john.weingart@rutgers.edu>
03/21/2006 11:45 AM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc [redacted]
bcc
Subject Re: Eagleton/MoritzVoter ID Report

History: This message has been replied to and forwarded.

Karen - Here is a reply to your question. Sorry not to have gotten it to you more quickly.

There are a couple of reasons why we used the CPS. Most importantly, it is a survey of individual voters, as opposed to election officials. The CPS allows us to make inferences about individual-level charactertistics (such as the age, race, education and income of each registered voter who responded to the survey), and how those characteristics combine with voter ID requirements to influence turnout. Also, the sample size is large, allowing for reliable analysis of sub-populations (just Hispanic voters, for example). Because of those two factors, most of the scholarly studies of voter turnout and the institutional and individual-level factors that go into turnout use the CPS.

The EAC also might ask why we collected our own aggregate data as opposed to using the results of the Election Day survey. We could provide greater detail if needed, but, in brief, the EAC Election Day Survey draws data from the jurisdiction that handles elections. In many states that is the county, but in the New England states the EAC Election Day Survey uses towns as its unit of analysis. Our aggregate data attempts to match voter turnout data to Census data, which we have gathered at the county level.

Conceivably, we could have gone through and matched Census data to towns for the New England states, but that would have been very time-consuming. Moreover, it would also have posed a problem with the statistical analysis of the aggregate data, which assumes a two-level statistical model with counties as the first level and states as the second level. Inserting a third level of towns just for the New England states would require that each town in each county be coded with vote totals and Census data for each. That would take months.

Let me know if you need additional information of would like to discuss.

Thanks, John

klynndyson@eac.gov wrote:

>
> Quick question-
>
> What was Eagleton's thinking behind using CPS data rather than EAC's
> Election Day Survey for the Voter ID report?
>
> Thanks
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission

> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/02/2006 02:04 PM

To Gracia Hillman/EAC/GOV@EAC
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M.
bcc
Subject Re: Eagleton close-out meeting

Commissioner-

Given travels costs and the number of persons involved from the Eagleton/Moritz team, the idea was to do the two meetings in the same day.

However, I could ask Nicole to determine if there is a day in March that might work with your schedule.

I am very reluctant to schedule a meeting later in April as the contract is technically over March 31 (a Friday). April 3 is the following Monday.

Please advise. Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Gracia Hillman/EAC/GOV
03/02/2006 01:57 PM

To klynn-dyson@eac.gov
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
Subject Re: Eagleton close-out meetingLink

I thought we were doing two separate time slots so that Eagleton would brief only two commissioners at a time?

Gracia Hillman/EAC/GOV
03/02/2006 01:57 PM

To klynn-dyson@eac.gov
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M.
bcc
Subject Re: Eagleton close-out meeting

History: This message has been replied to.

I thought we were doing two separate time slots so that Eagleton would brief only two commissioners at a time?

Nicole Mortellito/CONTRACTOR/EAC/GOV
03/02/2006 01:16 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia
cc Karen Lynn-Dyson/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Adam
bcc
Subject Eagleton close-out meeting

A close out meeting with the folks from Rutgers and the Eagleton Institute is being scheduled for April 3, 2006.

After a preliminary survey of your availability with your Special Assistants the time slot of 2:30-4:30 has been chosen for this meeting.

Please confirm that you are able to attend this meeting here at the EAC office if it is held at this time.

Regards,

Nicole K. Mortellito
Research Assistant
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax

"Tom O'neill"
[redacted]
03/02/2006 12:25 PM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, ireed@rutgers.edu, john.weingart@rutgers.edu, [redacted], foley.33@osu.edu, rmandel@rci.rutgers.edu, "Tim
bcc
Subject RE: Meeting with EAC in March

History: This message has been replied to and forwarded.

Karen, I circulated both the 23rd and 30th as possible dates and asked each member of the team to reply with which date worked best.

Ingrid may not be available on the 23rd, but others will be.

We planned to pick the date when most could attend.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, March 02, 2006 11:59 AM
To: [redacted]
Cc: nmortellito@eac.gov
Subject: RE: Meeting with EAC in March

I'll have Nicole double check on this.

I was under the impression from Ingrid that Eagleton's preference was March 30.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <tom_oneill@verizon.net>

03/02/2006 11:49 AM

Toklynndyson@eac.gov
cc
SubjectRE: Meeting with EAC in March

Karen,

Is March 23 now also off the table as a possible date?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, March 02, 2006 11:36 AM
To: [redacted]
Cc: nmortellito@eac.gov
Subject: Re: Meeting with EAC in March

Tom-

I'm going to ask our Research Assistant, Nicole Mortellito to try and work with our EAC Commissioner staff and with you to find a date and time for our close-out meeting.

I have run into a number of snags with schedules and have found that the 30th works for very few on this end.

Nicole, please work with Tom on dates which are either early on in March or the very first part of April.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]
03/02/2006 11:49 AM

To klynndyson@eac.gov
cc
bcc
Subject RE: Meeting with EAC in March

History: This message has been replied to.

Karen,

Is March 23 now also off the table as a possible date?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, March 02, 2006 11:36 AM
To: [redacted]
Cc: nmortellito@eac.gov
Subject: Re: Meeting with EAC in March

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I have run into a number of snags with schedules and have found that the 30th works for very few on this end.

Nicole, please work with Tom on dates which are either early on in March or the very first part of April.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Nicole Mortellito/CONTRACTOR/EAC/GOV

03/02/2006 11:37 AM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Re: Meeting with EAC in March

History: This message has been replied to.

Just so I'm not chasing loose ends on the EAC front....EAC staff attending the Eagleton close-out meeting are...

Please advise. Thank you!

Regards,

Nicole K. Mortellito
Research Assistant
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax

Donetta L. Davidson/EAC/GOV

03/01/2006 04:06 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Re: Final meeting with Eagleton

Sorry, I double checked and all dates are taken for me.

Donetta L. Davidson/EAC/GOV	To	Karen Lynn-Dyson/EAC/GOV@EAC
03/01/2006 04:03 PM	cc	
	bcc	
	Subject	Re: Final meeting with Eagleton

Karen, I can be there March 29th, sorry that is my only date.

"Tom O'neill" [redacted]
02/17/2006 01:27 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: January Progress Report

Karen, Dan Tokaji will be tied up until 3:30 that day –that's why I suggested 3:45. but you're right, the round number of 4 makes more sense. I'll let the group know.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, February 17, 2006 1:25 PM
To: [redacted]
Subject: RE: January Progress Report

3:45 is fine. Certainly, we could say 4:00

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

02/17/2006 11:28 AM

To klynndyson@eac.gov
cc
Subject RE: January Progress Report

Karen, It looks like 3:45 would be better for the group. If that fits your needs, I'll confirm with the participants from Eagleton and Moritz.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, February 17, 2006 8:55 AM
To: [redacted]
Subject: RE: January Progress Report

Tom-

Should I mark my calendar for 2/28 at 3:00?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

02/16/2006 10:58 PM

To klynndyson@eac.gov
cc
Subject RE: January Progress Report

Thanks, Dan.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 16, 2006 5:09 PM
To: [redacted]
Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; [redacted]; rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
Subject: RE: January Progress Report

Shall we say February 28 at 3:00 PM?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom
O'neill"
<tom_onei
ll@verizon
.net>

02/16/200
6 03:33
PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu, foley.33@osu.edu, [redacted]
Subject RE: January Progress Report

Karen, I'll survey the group about the best time for a conference call. The 24th does not look like a good time. We have a teleconference with the Peer Review Group on the Voter ID paper scheduled for Feb. 22, and therefore would be hard-pressed to review the précis of your comments in time for a discussion on the 24th. The next week would be more promising, perhaps Tuesday, Feb 28 in the afternoon.

We still plan to deliver the Voter ID paper to you the first week in March.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 16, 2006 1:33 PM
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Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; [redacted] rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
Subject: Re: January Progress Report

Tom-

I have now received comments back on the Provisional Voting Best Practices document, from all of EAC's senior staff. I am in the process of combining these comments into one document, and will get the copy to you by mid-week next week.

By-and-large the comments are not major. The comment of greatest magnitude relates to the fact-checking process and the overall accuracy of regarding Eagleton's/Moritz' recording of States' previous experiences with provisional voting.

Overall, the Commission is continuing to review its option of issuing guidance on this topic, along with best practices.

Shall we schedule a conference call for Friday, February 24 at 10:00 AM to go over the EAC's comments and Eagleton putting the finishing touches on its report?

Also, when should the EAC expect the Voter ID document?

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]

02/17/2006 11:28 AM

To klynndyson@eac.gov

cc

bcc

Subject RE: January Progress Report

History: This message has been replied to.

Karen, It looks like 3:45 would be better for the group. If that fits your needs, I'll confirm with the participants from Eagleton and Moritz.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, February 17, 2006 8:55 AM
To: [redacted]
Subject: RE: January Progress Report

Tom-

Should I mark my calendar for 2/28 at 3:00?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

02/16/2006 10:58 PM

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Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
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"Tom O'neill" [redacted]

02/16/2006 03:33 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu, foley.33@osu.edu, [redacted]

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Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart"
<john.weingart@rutgers.edu>
01/13/2006 04:07 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
bcc
Subject Re: No Cost Extension Request

Thanks. Hope you have a great weekend.

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

> John-
>
> Thanks ever so much for all your work on this. As you can see,
> contracts are a bit of a different animal than grants.
>
> Will incorporate this information into my materials, and recommend the
> extension of the contract to March. Still no word on the best
> practices document; you and Tom will be the first to know (smile).
>
> Regards-
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
> *"John Weingart" <john.weingart@rutgers.edu>*
>
> 01/13/2006 01:15 PM
> Please respond to
> john.weingart@rutgers.edu
>
> To
> "Karen Lynn-Dyson" <klynndyson@eac.gov>
> cc
> "Lucy Baruch" <baruch@rci.rutgers.edu>
> Subject
> No Cost Extension Request

>
>
>
> Karen - I am attaching a spreadsheet providing the information you have requested (Attachment 1), but I want to highlight a few points which may not be immediately self-evident.
>
> First, the original budget (Attachment 2) we submitted to the EAC, dated March 22^nd , did not itemize personnel expenses by each person. In addition, when we actually began work two months after submitting that budget, we decided to reallocate more time to people within Eagleton and hire fewer outside hourlies.
>
> Second, in the figures I sent you in late December we tried to account for all the expenses and projections but overlooked a few things including neglecting to include the honoraria for our peer review team. Hence, the figures we're now sending are different than what I sent in December.
>
> Lastly, we originally discussed a no-cost extension through February, but since we don't yet have the EAC comments on our draft Provisional Voting material nor an estimate of when they are likely to be ready, I think it is prudent to extend the no-cost extension through March 31^st . We would still like to conclude by the end of February, but if you can approve the extension for another month we could avoid going through this process again if everything is not complete six weeks from now.
>
> It is my understanding that Rutgers will soon be sending our December invoice. At this time, I would also like to request that we combine January and February an invoice the EAC once for that time period.
>
> As you can see, we are currently projecting an ending balance of approximately $10,000. If additional expenses are incurred beyond what is currently projected, we're confident they will not exceed the original budget of $560,002.
>
> Thanks and I look forward to hearing from you.
>
> --
> -- John Weingart, Associate Director
> Eagleton Institute of Politics
> (732)932-9384, x.290
>
>
>
>

"John Weingart"
<john.weingart@rutgers.edu>
01/13/2006 01:22 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Lucy Baruch" <baruch@rci.rutgers.edu>
bcc
Subject No Cost Extensions (with extensions)

History: This message has been forwarded.

Karen - I am attaching a spreadsheet providing the information you have requested (Attachment 1), but I want to highlight a few points which may not be immediately self-evident.

First, the original budget (Attachment 2) we submitted to the EAC, dated March 22^nd , did not itemize personnel expenses by each person. In addition, when we actually began work two months after submitting that budget, we decided to reallocate more time to people within Eagleton and hire fewer outside hourlies.

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Thanks and I look forward to hearing from you.

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Attachment 1-EAC Eagleton Institute budget for no-cost extension-1.xls Attachment 2-EAC Eagleton Institute Budget 3-22-05-1.xls

Eagleton Institute of Politics, Rutgers The State University of New Jersey
US Election Assistance Commission Project Budget (original 3/22/05; revised 1/13/06 for no-cost extension)

Description	Original Budget	Cumulative Expenses through Dec 2005 (actual and committed)	Post Jan 1 Projected Expenses	Projected Balance	Post Jan 1 Projected Hours	Post Jan 1 Hourly Rate
Eagleton Faculty and Staff (salaried and hourly)		**84,263.20**	**15,250.00**			
Ruth Mandel, Director and Professor		5,682.86	3,500.00		43	81.98
John Weingart, Associate Director		7,347.00	3,500.00		72	48.74
Ingrid Reed, Director of Eagleton NJ Project		19,500.00	2,500.00		63	40.00
Don Linky, Director of Electronic Democracy Project		8,100.00	1,750.00		47	37.50
Tim Vercellotti, Assistant Research Professor		9,384.00	2,500.00		64	38.96
April Rapp, Research Project Coordinator		12,844.55	0.00		0	
Lauren Vincelli, Project/Bus. Administrator		10,800.90	0.00		0	
Michele Brody, Administrative Assistant		0.00	500.00		23	21.97
Lisa Velasquez, Administrative Assistant		6,503.89	0.00		0	
Linda Phillips, Unit Computing Specialist		2,100.00	250.00		10	25.07
Joanne Pfeiffer, Secretary		2,000.00	750.00		38	19.77
Rutgers Graduate Students (hourly)		**15,531.60**	**3,500.00**			
Dave Andersen		6,060.00	1,500.00		125	12.00
Nadia Brown		906.00	0.00		0	
Jilliam Curtis		1,002.00	0.00		0	
Johanna Dobrich		1,635.60	1,000.00		83	12.00
Dave Harris		5,928.00	1,000.00		83	12.00
Fringe (rates vary by employee type)		**21,332.56**	**4,567.50**			
Subtotal Personnel Expenses	**110,695**	**121,127.36**	**23,317.50**	**(33,749.86)**		
Honoraria						
Honoraria for Peer Review Group	**10,000**	**0.00**	**10,000.00**	**0.00**		
Public Hearings	**81,120**	**948.74**	**0.00**	**80,171.26**		
Public Hearings	75,000	0.00	0.00			
Transportation	6,120	948.74	0.00			
Briefings/Meetings						
Train, ground, lodging, meals	**5,200**	**1,302.82**	**1,750.00**	**2,147.18**		
General Operations	**20,000**	**20,029.59**	**1,750.00**	**(1,779.59)**		
Office supplies, software, telephone, copying, postage	10,000	9,003.11	1,750.00			
Desktop computers, laptop, printer	10,000	11,026.48	0.00			
Subcontracts						
Project Director-Tom O'Neill	**79,500**	**81,750.00**	**18,000.00**	**(20,250.00)**	192	93.75
Ohio State University (OSU)-Legal Analysis*	**84,744**	**84,222.35**	**23,692.66**	**(23,171.01)**		
OSU Personnel (with fringe)	50,735	55,724.22	14,001.15			
Ned Foley, Professor		30,514.24	8,687.03		72	120.65
Dan Tokaji, Professor		3,313.65	1,408.82		16	88.05
Laura Williams, Project Coordinator		7,846.00	2,320.00		80	29.00
Sara Sampson, Research Coordinator		5,229.14	705.30		20	35.27
Research Assistants		8,821.19	880.00		100	8.80
OSU Travel	5,950	611.80	1,846.78			
OSU Overhead	28,059	27,886.33	7,844.73			
Subtotal Non Personnel Expenses	**280,564**	**188,253.50**	**55,192.66**	**37,117.84**		
Subtotal Direct Costs	**391,259**	**309,380.86**	**78,510.16**	**3,367.98**		
Fac&Admin (overhead) on Modified Total Direct Cost	153,743	117,790.20	19,881.45	**16,071.68**		
TOTAL Project Budget	**545,002**	**427,171.06**	**98,391.61**	**19,439.66**		
Optional Surveys						
State Election Officials	15,000	24,269.04	0.00	**(9,269.04)**		
Total Project Budget with Optional Survey	**560,002**	**451,440.10**	**98,391.61**	**10,170.62**		

*Ohio State University figures are included in the "cumulative expenses through Dec 2005" even though Rutgers has not yet received the cumulative invoices.

Eagleton Institute of Politics, Rutgers The State University of New Jersey
US Election Assistance Commission Project Budget (3/22/05)

Description	Budget	
Personnel		
Eagleton faculty/senior staff	35,000	Mandel, Weingart, Reed, Linky (various percentages)
Eagleton staff: logistics/administrative/clerical	15,000	(various percentages)
Fringe (32.5%)	16,250	
	66,250	
Hourly Personnel		
Research Coordinator	21,250	1250 hours at $17 per hour
Logistics/Admin Coordinator	12,325	725 hours at $17 per hour
Research assistants	7,200	300 hours at $12 per hour for two researchers
Fringe on Hourly (9%)	3,670	
	44,445	
Subtotal Personnel Expenses	**$110,695**	
Honoraria		
Honoraria for Peer Review Group	**10,000**	10 at $1,000
Public Hearings (3 in 3 cities)		
Public Hearings	75,000	3 hearings at $25K per EAC figures
2 Hearings in DC- train, ground, lodging, meals*	3,480	attended by 3 staff
1 Hearings in St. Louis- air, ground, lodging, meals**	2,640	attended by 3 staff
	81,120	
Briefings/Meetings with EAC		
Train, ground, lodging, meals***	**5,200**	5 briefings in DC, attended by 2 staff
General Operations		
Office supplies, software, telephone, copying, postage	10,000	
Desktop computers, laptop, printer	10,000	
	20,000	
Subcontract		
Project Director- O'Neill	**79,500**	80% time April – Aug., 60% Sept. – Oct.
Ohio State University- Legal Analysis	**84,744**	Partner institution, Moritz College of Law, OSU
Subtotal Non Personnel Expenses	**$280,564**	
Subtotal All Direct Cost	**391,259**	
Modified Total Direct Cost $277,015****		
F&A on Modified Total Direct Cost (55.5%)	153,743	Rutgers University federally approved rate.
TOTAL Project Budget	**$545,002**	
Optional Surveys		
State Election Officials	15,000	Eagleton
Young Voters	25,000	Eagleton
Provisional Voting, 1st state	116,000	OSU Political Science
Provisional Voting, 1st additional state	75,000	OSU Political Science
Provisional Voting, 2nd additional state	60,000	OSU Political Science
Total Optional Surveys (no F&A)	**$291,000**	

* Travel and lodging to two hearings in DC includes $260 for train fare to DC, $200 for hotel/lodging, and $60 per day for two days for meals= $580 per person per trip for three people.

** Travel and lodging to one hearing in St. Louis includes $500 airfare to St. Louis, 2 nights hotel/lodging at $100, and $60 per day for three days for meals= $880 per person for three people.

*** Travel and lodging to five Briefings/Meetings with EAC includes $260 for train fare to DC, $200 for hotel/lodging, and $60 for meals= $520 per person per trip for two people.

**** Modified total direct cost is equivalent to total direct cost except for two items - F&A included only on first $25K of subcontract with Project Director ($79,500) and first $25K of subcontract with OSU ($84,744).

Nicole Mortellito/CONTRACTOR/EAC/GOV
01/05/2006 04:15 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Emailing: 12-8-05Eagleton Memo

History: This message has been forwarded.

Here is the updated Eagleton Memo.

Your files are attached and ready to send with this message.
Regards,

Nicole K. Mortellito
Special Projects
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax

- 12-8-05Eagleton Memo.doc

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

December 9, 2005

MEMORANDUM FOR THE RECORD

On May 24, 2005 the U.S. Election Assistance Commission awarded an eight month contract (December 30, 2005) in the amount of $560,002.00 to the Eagleton Institute of Politics (Rutgers, The State University of New Jersey) to provide research assistance to support development of guidelines on the topics of provisional voting and voter identification procedures.

On November 15, 2005, John Weingart, Associate Director of the Eagleton Institute of Politics, requested via e-mail, a no–cost extension on this contract (E4014127). Mr. Weingart has requested an extension to complete the work of this contract to February 28, 2006.

In subsequent correspondence, Mr. Weingart notes the following as the reason for the request:

"The original work schedule called for EAC to publish in mid-October, voluntary guidance and/or recommended best practices for provisional voting, based on Eagleton's research. In making that time estimate, we did not provide sufficient time for the EAC to review and consider the draft reports that would form the basis for that publication….. The additional time required to complete the work on provisional voting has delayed the completion of our analysis of Voter Identification issues. The draft report of that topic will be submitted to the EAC in mid-January".

He further notes:

"If EAC does not object, funds originally allocated for the hearings would be available for transfer to support the additional staff and consultant time necessary to complete the work…"The total project budget is $560,002. As of October 31st, the EAC has been invoiced for $259,081.79; the balance remaining is $300,920.21. We anticipate that the project will be complete and the balance of funds fully expended by February 28, 2006. The final invoice for the contract will be submitted to the EAC within 75 days of the close of the project".

Karen Lynn-Dyson, the EAC's Contracting Officer Representative assigned to this contract has reviewed this request, the rationale and authority for it (FAR 43.103(a)(3)) and finds it to be appropriate. To-date the Eagleton Institute has consistently met its deadlines for major project deliverables and stayed within the project budget. To grant the Eagleton Institute a two month extension on this contract in order to obtain the necessary feedback on major documents it has produced will be within the best interests of the Election Assistance Commission, and thus, the federal government.

EAC's Contracting Officer Representative finds that to grant the Eagleton Institute a no-cost extension for the modification of its contract with the EAC is within the scope of the original agreement and is recommending that this modification to the contract be made.

Signed

Karen Lynn-Dyson
Contracting Officer Representative
U.S. Election Assistance Commission

Gracia M. Hillman
Chair
U.S. Election Assistance Commission

Nicole Mortellito/CONTRACTOR/EAC/GOV
01/05/2006 01:58 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject No cost extension memo

Karen here is the language from the no-cost extension memorandum. It will just need to be put on letterhead which I'm happy to do once you've worked your magic. I will bring by a copy of the amendment of solicitation of contract form 30 in a moment.

Gavin S. Gilmour/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

Eagleton no-cost extension.doc Karen Lynn-Dyson

Regards,

Nicole K. Mortellito
Special Projects
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax

"Johanna Dobrich"
<jdobrich@eden.rutgers.edu>
12/13/2005 12:29 PM

To klynndyson@eac.gov
cc "tim.vercellotti@rutgers.edu" <tim.vercellotti@rutgers.edu>, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu,
bcc
Subject November's Progress Report

History: This message has been forwarded.

Dear Ms. Karen Lynn-Dyson:

Attached please find the Eagleton/Moritz Progress Report for the month of November.

Please direct any questions about this report to Tom O'Neill ([redacted]).

Sincerely,

Johanna Dobrich

--

Johanna Dobrich
jdobrich@eden.rutgers.edu

ProgressReport_ NOVEMBER 2005_ Eagleton Institute of Politics.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to the EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT

November 2005

For

UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

December 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
    - Task 3.7
    - Task 3.8
- Voter Identification Requirements
    - Task 3.10
    - Task 3.11
- Project Management
    - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from November 1 through November 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In November we completed and submitted our Provisional Voting analysis paper, including recommendations to the EAC for best practices. These policy prescriptions are based on our research and the comments of the Peer Review Group on that research. We completed a careful review of our data to reconcile it with other sources and identify the latest, most reliable information to use in the analysis. The importance of this demanding effort was described in October's Progress Report. We continue to await the EAC's comments on that final draft.

Also in November we revised the schedule for the project in light of the additional time that has been needed for review of earlier drafts by the EAC and the late completion of the Election Day Study. We made a written request to the EAC for a no-cost extension of the contract through the end of February which we understand is likely to be approved before Christmas.

Since the submission of our Provisional Voting report to the EAC on November 28, 2005, our efforts have been entirely aimed at the completion of the voter identification research. We have been advised that EAC will take several weeks to review and react to our final draft on provisional voting. As we await a January meeting on that topic, we are moving ahead quickly on the statistical analysis of voter identification data and summarizing the legal research that was completed earlier.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to [redacted] [redacted]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November.

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. That recommendation followed agreement by the EAC with that course of action. The submission of that report and recommendations, however, constitutes the document required under this task. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we await the EAC's decision on how to proceed.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is the principal focus of our research at this time.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: The 50 state (plus District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C. Moritz has completed its review of voter identification litigation. Moritz and Eagleton have worked together to review the research, clarify the categorization of that research on our charts, and reconcile the data developed in our two different research techniques categorizations.

Challenges: The biggest challenge facing the reconciliation process of research findings, descriptions and categorizations is that it is being done by two different teams (Moritz and Eagleton) who rely on different primary source materials. Despite the necessity this has created to reconcile conflicting data from time to time, the collaboration has also been very beneficial because it has made our research efforts more rigorous.

Work Plan: During December we will conclude our reconciliation and continue analysis of voter identification research, including an analysis of the most important issues and trends in voter identification litigation.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

During the month of November, we developed narratives to establish how laws were passed, looking at when they were proposed and when they were eventually enacted. In the upcoming month, Eagleton will examine voter registration forms across the states to see what forms of identification are requested from mail-in registrants. The difficulty will be determining the 2004 status of the states.

VOTER ID AND TURNOUT ANALYSIS

Now under way is a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. In November, we have analyzed both aggregate- and individual-level data to determine whether there is any relationship between voter turnout and the various forms of voter identification states require.

Progress: Analysis is under way for two data sets: County-level data that includes registration and turnout rates for 2000 and 2004, as well as Census measures and indicators of the type of voter identification requirements that were in existence at the time of the 2004 presidential election. The second data set consists of the voter supplement to the November 2004 Current Population Survey. This data set allows for testing of the same hypotheses at the individual level. Preliminary findings from the aggregate data set suggest that voter ID requirements have their greatest effect at the registration stage, as opposed to the turnout stage. This is a first cut at the data, however, and we will be adding a number of control variables to the analysis to see if the relationship holds.

Challenges: These analyses use hierarchical linear modeling. Because voter identification requirements vary by state, one must pay special attention to other, unseen state-level influences on the data. The models are difficult to run and interpret, so the analyses are time-consuming

Work Plan: The statistical analyses will continue during the month of December, and a draft of the findings is anticipated by the end of the month.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: During the month of November, Eagleton contacted the PRG Members on two occasions. First, all members received the final draft provisional voting report that was submitted to the EAC. Further comments are welcome but not expected from the PRG. Second, we have asked PRG members to reserve two dates in mid-January for potential conference call sessions to review the voter identification report.

Challenges: No new challenges were encountered during November.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site, and. regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project November 1- November 30, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

"John Weingart"
<john.weingart@rutgers.edu>
11/15/2005 04:17 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
bcc
Subject Re: Provisional Voting Report Status and Request for Advice

Thanks. if you can answer the administrative questions more quickly, that would be great.

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> John-
>
> Many thanks for getting this draft document to us.
>
> Over the next day or so I will spend time with key EAC staff reviewing
> the document and considering your questions. As you may recall,
> Commissioner Martinez has taken a prominent role in the review of your
> initial work and I am certain he will continue to do so. Sadly, the
> Commissioner lost his mother two weeks ago and, consequently, will not
> return to the office until next week.
>
> It is likely that EAC staff will not be able to give you a definitive
> answer on some of your questions until the Monday after Thanksgiving.
> I will, however, try to answer some of the administrative questions
> before that time.
>
> Regards-
>
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
>
>
> *"John Weingart" <john.weingart@rutgers.edu>*
>
> 11/15/2005 10:53 AM
> Please respond to
> john.weingart@rutgers.edu
>
>
>
> To
> "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel"
> <rmandel@rci.rutgers.edu>

> cc [redacted]
>
> Subject
> Provisional Voting Report Status and Request for Advice
>
> Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.
>
> We are planning to submit our report on Provisional Voting to the EAC by November 18^th . Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.
>
> We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)
>
> QUESTIONS:
> 1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?
>
> 2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule realistic in anticipating EAC comments no later than the week of December 12^th on the report we send you at the end of this week?
>
> 3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)
>
> 4. In any case, we will need a no-cost extension to the contract to carry us past December 31^st . How do we make that request?
>
> 5. Assuming that we conduct fewer public hearings than we had

> anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?
>
> We look forward to discussing these matters with you.
>
> Thanks, John
>
> --
> -- John Weingart, Associate Director
> Eagleton Institute of Politics
> (732)932-9384, x.290
>
>
>

"John Weingart"
<john.weingart@rutgers.edu>
11/15/2005 10:53 AM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel" <rmandel@rci.rutgers.edu>
cc "[redacted]>
bcc
Subject Provisional Voting Report Status and Request for Advice

History: This message has been replied to and forwarded.

Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

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We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?

2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule realistic in anticipating EAC comments no later than the week of December 12^th on the report we send you at the end of this week?

3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)

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be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

KeyDatesRev1110.doc

"Tom O'neill"
[redacted]>
11/14/2005 05:25 PM

To klynndyson@eac.gov
cc Vincelli@rutgers.edu, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu,
bcc
Subject October Progress Report

Karen,

Attached is the Progress Report for October. Please note that this report includes at attachment showing how our study classifies each state on key variables, such as counting out-of-precinct ballots, requirements for ballot evaluation, and other variables. It also displays how the data we used differs for some states for the vote counts reported by the Election Day Survey. We believe that our data is more accurate and complete (see for example the data for New Mexico and Pennsylvania).

I look forward to responding to any questions or concerns you or others at the EAC may have.

Tom O'Neill

jdobrich@eden.rutgers.edu
10/17/2005 03:14 PM

To klynndyson@eac.gov
cc
bcc
Subject Eagleton's September Progress Report

History: This message has been forwarded.

Dear Ms. Karen Lynn Dyson:

My name is Johanna Dobrich and I have taken over the responsibility of sending the Eagleton Institute of Politics Monthly Progress Reports to you, in place of Lauren Vincelli.

Attached in this email you will find the Eagleton Institute of Politics monthly Progress Report for September 2005. Also attached, is a document called "PRG Summary Comments" which is an attachment to September's Progress Report.

Please email me at jdobrich@eden.rutgers.edu to confirm that you have received this email. If you prefer I send a hard copy of these documents, in addition to the electronic version, please let me know.

Sincerely,

Johanna Dobrich

ProgressReport_SEPTEMBER2005_EagletonInstitute.doc PRG Summary Comments 10.17.05.doc

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to The EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
September 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

September 14, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
  - Task 3.5
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from September 1 through September 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

We focused in September on refining our Provisional Voting research. This refinement was necessary to prepare a strong final analysis paper and develop alternative approaches to Provisional Voting based on the analysis. An important part of this refinement involved reconciling sometimes conflicting data on Provisional Voting from different sources, including the Election Day Study, which finally became available in September. With a clearer understanding of our data, we began the critical work of selecting alternatives to recommend to the EAC as guidance or best practices responsive to both our research and the needs of the Commission.

Three meetings this month helped us accomplish the necessary refinement. We briefed the EAC on our work on September 6, held the first meeting of the Peer Review Group (PRG) on September 21, and gained the benefit of the EAC's reaction to the September 6 briefing in a conference call on September 30.

The completion of our work on Provisional Voting has been delayed by the time needed to absorb and incorporate the findings of the EAC Election Day Study, to recruit and receive the comments of the PRG, and to receive the Commission's comments on the September 6 briefing. The schedule called for the release of the Election Day Study last spring, the submission of the Preliminary Guidance Document to the EAC's advisory boards in mid-September, and a public hearing on the Guidance Document in late October. We now plan to submit to the EAC a final draft of our report, a preliminary guidance document, and draft best practices before the end of October. And we understand that after review of those materials, the EAC will decide whether to issue a guidance document or recommend best practices. Projecting a late November date for those decisions seems reasonable. If the EAC does decide to issue a Guidance Document on Provisional Voting, the time needed for a review by the advisory boards is likely to delay a public hearing until January.

While we have made a good start on the Voter ID sections of our research, most time and resources this month were dedicated to resolving issues involved in Provisional Voting.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to Tom O'Neill at:
[redacted]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, and Task 3.5 is well underway.

Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of Provisional Voting and develop alternative means to achieve the goals of Provisional Voting.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with Provisional Voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on Provisional Voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and is near completion with this research.

Progress: We have completed the memorandum outlining Provisional Voting legislative changes since the 2004 election and we are continuing to clarify the laws prior to these changes.

Challenges: The variety in the form and frequency of Provisional Voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The analysis of the information, data, and survey results concerning Provisional Voting was completed in September, on schedule. We are now revising it in response to comments by the Peer Review Group (PRG). We are also revising the alternatives document to reflect the critique of the PRG and the guidance from the EAC in response to the September 6 briefing.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with Provisional Voting in 2004. The report findings from the survey of 400 local election officials are now complete. The survey results have proven to be instrumental in shaping our understanding of actual practice in administering Provisional Voting, including the steps local officials took to prepare for the election.

PROVISIONAL VOTING NARRATIVES

Description: To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with Provisional Voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to Provisional Voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

Progress: We completed a state-by-state narrative of developments in Provisional Voting and distributed it to the EAC and the PRG. This work has been helpful in understanding the context of the data collected on provisional voting from the states.

Challenges: The primary obstacle to constructing the narratives was difficultly in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent several revisions to incorporate up-to-date and reliable information. Now that so many other analyses, including the Election Day Survey, have been released, we were challenged by different interpretations of the same basic facts. But the reconciliation of interpretation and data collection has been invaluable in establishing rigor in our report.

Work Plan: We completed revisions of the narratives incorporating comments from the PRG.

PROVISIONAL VOTING STATISTICAL ANALYSIS

Description: Throughout September the Eagleton research team revised and clarified its statistical analysis, and worked to reconcile the classifications of this analysis (such as states counting only those provisional ballots cast within the proper precinct versus states that counted ballots cast within the proper county) with the classification made in other parts of this study or in other studies (such as the Election Day Study or *Electionline* reports).

Progress: In response to comments from the PRG, we have clarified and sharpened the presentation on the methods used and results achieved in the statistical analysis. We have double checked the classification of variables upon which the study is based and reconciled differences in various areas of the overall study. This effort is nearing completion.

Challenges: The difficulties encountered have been a result of communication delays and time constraints. Overall, these are not problems or hindrances, but simply slow down the process.

Work Plan: In mid-October we aim to complete a final revision of the statistical analysis and a full reconciliation of all data within the study.

SURVEY OF COUNTY ELECTION OFFICIALS

Description: The Eagleton Center for Public Interest Polling (CPIP) conducted a national survey of county election officials to measure several aspects of Provisional Voting.

Progress: The analysis of the survey results and findings report is complete. As a result of the critique by the PRG, the research team is revising and clarifying the descriptions of the survey design and sample selection process to make the research methods more transparent.

Work Plan: We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5. We will include necessary clarifications regarding survey design and sample selection in the final analysis and alternatives document.

Peer Review Group

Most members of the PRG met by telephone conference on September 21 to comment on all the research described above. Participating in the meeting were Michael Alvarez, Martha Kropf, Dan Lowenstein, Peter Verniero, Brad Smith, and Tim Storey. Timothy O'Rourke contributed his comments separately. The group provided a detailed critique of our approach, methods, and conclusions, and we are now revising each document in response to the comments and suggestions. It praised the quality of the work and the rigor of much of the analysis. A summary of the suggestions from the members of the PRG is attached to this report.

Challenges and Work Plan

Making arrangements for review of drafts by the PRG and by the EAC has taken longer than anticipated by the Work Plan. The schedule called for all research and analysis to have been completed and incorporated into a Draft Preliminary Guidance Document by mid September. The review process by the EAC and PRG took longer than contemplated by the Work Plan. And we now understand that the EAC will make a separate decision –that will require additional time-- whether to issue a Guidance Document or recommendations for best practices. It has not, therefore, been possible to schedule a public hearing or arrange for review of our work by the EAC's advisory boards, as called for in the Work Plan. We now aim to complete our reports and recommendations for guidance by the end of October, and to then await a response from the EAC before scheduling submission to the advisory boards or making arrangements for a hearing.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is becoming the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: The 50 State (plus the District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Work Plan: Analysis of voter identification data will begin now.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. We understand that the EAC has issued a research contract that will focus on vote fraud and vote suppression. Our research in this area will be limited to developing an understanding of the tradeoffs between ballot security and access to the ballot. We have completed the basic database on voter identification issues has been completed, and the next key step will be drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

Progress: The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also utilized exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout.

Challenges: The analysis of these data has been postponed until the data reconciliation of Provisional Voting is complete. The main challenge now is an issue of time management. As a result of the extensive revision and data reconciliation efforts aimed at the Provisional Voting section of our work VID has been temporarily placed on hold.

Work Plan: The analysis of the impact that voter identification requirements have upon voter turnout should be completed by early November.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a PRG. It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

Progress: The research team held its first conference call with PRG members on September 19, 2005. The research team will hold a workshop meeting on October 19, 2005 to address the PRG's comments.

Challenges: To date we still have not heard back from two PRG Members.

Projections: Revisions and clarifications to our reports on Provisional Voting will be resolved by the end of October. We will need to schedule a second conference call to review our research with regard to Voter Identification Requirements in late November. As noted earlier, a summary of the comments we have received from the PRG is attached to this report.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole.

Projections: The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

Progress: Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has helped team members and serves as an internal website with announcements and important documents readily available to all team members.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project September 1- September 30, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

Peer Review Group
Summary of Comments
To the Eagleton/Moritz Group
Under Contract to Provide Research Assistance to the EAC

October 15, 2005

The Peer Review Group (PRG) met by telephone conference on September 21. Those participating included: Michael Alvarez, John C. Harrison, Martha Kropf, Dan Lowenstein, Peter Verniero, Brad Smith, and Tim Storey. This summary also includes additional written remarks submitted by Martha Kropf and additional remarks from a follow-up phone call with Timothy O'Rourke. We are now addressing all the comments including, in some cases, returning to members of the group to seek further elaboration or clarification.

We encouraged the members of the PRG to comment about any aspect of the project. We furnished them with these materials before the meeting.

1. Survey of local (mainly county) officials conducted in June 2005.
2. State-by-state narrative of developments in provisional voting
3. Statistical Analysis of state provisional voting
4. Memorandum on Provisional Voting Litigation
5. Memorandum on Provisional Ballot Litigation by State
6. July Memorandum on Provisional Ballot Litigation by Issue

We suggested that PRG members rank our draft responses to each of the six key questions posed by the EAC along these lines:

1- Research supports conclusions well.
2- Research supports some conclusions. Specific questions are:
3- Research does not support conclusions. Major problems are:

On the Alternatives paper, we asked PRG members to list up to three items they found questionable in light of the research and their own knowledge of provisional voting and election administration and to give us their thoughts on alternative policies that we had no included.

General Suggestions

1. Make transparently clear the meaning of **'old' versus 'new' states**. It is not enough to categorize the states as such, we need to determine why specific states were considered 'old' or 'new' (i.e. clarify what conditions were met by old states).

2. Be **clear** in our report about the **data that we were unable to obtain** and perhaps speculate on why that data was not available. (For example, do we have the documentation the state election boards gave the localities regarding counting practices? If not, why not? Indicate the states for which it was difficult to obtain data.

3. Prescribe less and **describe more** (tell what voters/administrators have done, not what they should have done or ought to do).

4. Questioned our assumption about public trust – How do we know that decreases in disputes/challenges signify an increase in public trust? We need to explain this assertion.

<u>Specific Review by Area of Analysis/Document</u>

Response to Statistical Review:

- Challenged our emphasis on the number of provisional ballots counted as a percentage of those cast as an indication of success of Provisional Voting. Suggested alternative relationships to consider (PB v. Turnout, PB v. Registered Voters, and PB v. Voting age Population).
- Wanted the inclusion of variation within states among counties (and geographical considerations).
- The report needs to address the quality and validity of the data used in the analysis.
- On Page 8, cautioned using the estimate of 280,000 disenfranchised voters who would have voted if outside precinct voting was permitted.

Response to Question Four:

- Remove the comments in the footnote (p. 1) that offers an alternative way of analyzing the question relating to the possible increase in voter participation as a result of provisional voting because the margin of error in the Census survey does not support a conclusion at this level of significance.
- Address the alternative explanation for why old states may enfranchise more voters than new states (i.e. Kropf 's Failsafe option).
- Include a statistical summary of the relationship between the length of time a state has had PV and the rate at which votes are counted.

Response to Question Five:

- Is it possible to draw any conclusions about the local differences within and among states broken down by county (presumably 20 states worth)?

- Clarify what is meant by "design" and say how many states have/had provisional ballots that are designed differently and look different. Why is design important?

- Page 17 indicates that states with statewide voter databases end up validating fewer PVs. This is important & should be addressed in more detail.

Response to Question Six:

- On the usefulness of instructions, 98% said the instructions were useful. Make it clear that this represents 98% of the officials who got instruction.

- Is the passive voice the best means to communicate this information (for ex. "Second, objectively how well did the process appear to be managed?")

Response to State Narratives:

- When in doubt about whether we have data to support a sentence it is important to be careful about the language we use (say 'doing XYZ would have revealed' as opposed to 'most of what we know about XYZ revealed'…)

- Clarify for the readers what is meant by "provisional vote/total vote". Does that mean provisional votes cast? Counted? Make it clear right at the beginning of every document?

- Footnote states that do not list poll sites or tell people where to vote with the fact that many cities/counties do have a poll finder.

Election Official Survey

- Clarify how we determined who to include in the sample and how we developed the questions in the survey (was a focus group an initial step?) Why were 3,800 election officials deemed eligible to participate (out of how many? 5,000 or so?)

- Clarify old and new states on pg. 2 in National Survey. Comment on how to assess fraud in provisional voting? What is the relationship between PV and turnout?

- Explore more issues about citizenship (18% non-citizen voting in CA)?

- Appendix A says survey was random, but it's not. How was the data weighted for small, medium and large counties, and for other issues? Clarify this in the report.

- Why doesn't the total of new and old states equal 50 (25 and 18) and why does the National Survey of Election Officials have different numbers? Is FL an 'old' state?

- Are the New England states underrepresented in the survey? If so, why?

- Report should offer more information about the response rate.

. **Alternatives Document**

- The importance of clarity in state processes for both administrators and voters needs to be better articulated.
  (Better training of poll workers, clarity whether failure to check boxes disqualifies voters, access to better info. at polling locations)

- Cautions the use of definitive statements (such as A-3, perhaps say "This raises the question of…").

- Have other EAC Guidelines been tested in court yet?

- On page 3: the 'tracking number' in # 6 is not feasible. Also, "the information" in # 12 should be changed to "the website and 800 numbers" for clarification.

- Page 6, there were disagreements about # 1 and # 2 of options in Sec. F regarding the installation of a separate body to rule on PV for the integrity process; a motion was made to get rid of them.

- Page 6, Sec. E option # 1 should be eliminated or clarified

- Add to Sec. F a '# 5' requiring states to provide detailed public info. on PV

"John Weingart"
<john.weingart@rutgers.edu>
09/27/2005 03:56 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov, rmartinez@eac.gov, twilkey@eac.gov, arapp@rutgers.edu, davander@eden.rutgers.edu,
bcc
Subject Re: EAC Conference Call - Friday 9/30

History: This message has been replied to.

Karen - Let's do it on Friday at 1:30. From my initial polling, at least Tom O'Neill, Ingrid Reed and I will be available. Since we will not all be at the same location, would you like us to initiate a conference call from here and give you a number to call in to?

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

> Eagleton/Moritz team-
>
> I'd leek to propose a conference call with EAC Commissioner Martinez, General Counsel ,Julie Thompson, Research Manager Karen Lynn-Dyson and your team for either *10:30 or 1:30 on Friday, September 30*.
>
> This will be to discuss the draft guidance and final report you will be producing for the EAC.
>
> Please let me know which time works for you
>
> Regards
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Juliet E. Thompson/EAC/GOV
09/27/2005 02:31 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject When are we talking to Eagleton?

I am having Gaylin set some other things for me this week. So, I would like to nail down the time with Eagleton.

Juliet E. Thompson
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Adam Ambrogi/EAC/GOV
09/21/2005 05:31 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: Monday Meeting??

Ray's available.

Adam D. Ambrogi
Special Assistant to Commissioner Ray Martinez III
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite 1100
Washington, DC 20005
202-566-3105

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
09/21/2005 04:26 PM

To Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC
Subject Fw: Monday Meeting??

Special Assistants-

The Chair is asking whether or not you have cleared the date and time on you Commissioner's calendars for this Monday afternoon discussion (3:30-5:00)

Please advise.

Thanks

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/20/2005 04:22 PM -----

Gracia Hillman/EAC/GOV
09/21/2005 04:11 PM

To klynn-dyson@eac.gov, sbanks@eac.gov
cc
Subject Monday Meeting??

Does it look like the commissioners will all be available to meet on Monday afternoon to discuss Eagleton?

Sheila A. Banks/EAC/GOV
09/21/2005 05:12 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: Monday Meeting??

History: This message has been replied to.

The Chair is available. Sorry, Karen.

Nicole Mortellito/CONTRACTOR/EAC/GOV
09/21/2005 04:31 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: Monday Meeting??

Tom is available.

Regards,

Nicole K. Mortellito
Assistant to the Executive Director - Thomas R. Wilkey
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.3114 phone
202.566.3127 fax
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
09/21/2005 04:26 PM

To Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC
Subject Fw: Monday Meeting??

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Please advise.

Thanks

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/20/2005 04:22 PM -----

Gracia Hillman/EAC/GOV

09/21/2005 04:11 PM

To klynn-dyson@eac.gov, sbanks@eac.gov

cc

Subject Monday Meeting??

Does it look like the commissioners will all be available to meet on Monday afternoon to discuss Eagleton?

Amie J. Sherrill/EAC/GOV
09/21/2005 04:29 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: Monday Meeting??

The notice i received from Sheila had 1:30 - 3:30 pm. Has this changed??

Amie J. Sherrill
Special Assistant to Vice Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
09/21/2005 04:26 PM

To Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC
Subject Fw: Monday Meeting??

Special Assistants-

The Chair is asking whether or not you have cleared the date and time on you Commissioner's calendars for this Monday afternoon discussion (3:30-5:00)

Please advise.

Thanks

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/20/2005 04:22 PM -----

Gracia Hillman/EAC/GOV
09/21/2005 04:11 PM

To klynn-dyson@eac.gov, sbanks@eac.gov
cc
Subject Monday Meeting??

Does it look like the commissioners will all be available to meet on Monday afternoon to discuss Eagleton?

Gracia Hillman/EAC/GOV
09/21/2005 04:11 PM

To klynn-dyson@eac.gov, sbanks@eac.gov
cc
bcc
Subject Monday Meeting??

History: This message has been forwarded.

Does it look like the commissioners will all be available to meet on Monday afternoon to discuss Eagleton?

Donetta L.
Davidson/EAC/GOV
09/20/2005 04:34 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Confirming Commissioner availability for Monday, 9/26 discussion of Eagleton provisional draft guidance

I'll be there. dd

"Tom O'neill"
[redacted]
09/15/2005 11:29 PM

To klynndyson@eac.gov
cc
bcc
Subject EAC comments on Alternatives Outline

Karen,

Sorry I missed your calls today. Your message was good news. We will look forward to learning from you the Commissioners' reactions to the Alternatives Outline next Friday. In the meantime, we continue to flesh out the analysis, sharpen the alternatives, and move the research on Voter ID to the stage of drafting the of our analysis of those issues. And, of course, our work will finally benefit from the critique of the Peer Review Group at its first teleconference next week.

Tom O'Neill

"Lauren Vincelli"
<Vincelli@rutgers.edu>
08/15/2005 03:01 PM
Please respond to
Vincelli@rutgers.edu

To klynndyson@eac.gov
cc "'Tom O'neill'" [redacted]
rmandel@rci.rutgers.edu, john.weingart@rutgers.edu
bcc
Subject Eagleton Institute of Politics - July 2005 - Monthly Progress Report

History: This message has been forwarded.

Ms. Dyson,

Attached please find the July 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please contact Tom O'Neill at: [redacted]

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,
Lauren Vincelli

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551

ProgressReport_JULY2005_EagletonInst.pdf

EAGLETON INSTITUTE OF POLITICS

Contract to Provide Research Assistance to The EAC For the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures

MONTHLY PROGRESS REPORT
JULY 2005

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

August 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

OUTLINE

- Introduction
- Provisional Voting
  - Task 3.4
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from July 1 through July 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The effort this month continued to focus on research for the analysis and alternatives paper, including the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states. We also prepared and delivered testimony at the EAC's regular monthly meeting in Pasadena on July 28.

The data collection, analysis, and compilation are all on schedule. Because of delays in agreeing on the composition of the Peer Review Group with EAC, however, the actual completion and submission of the analysis and alternatives paper to the EAC will most likely be delayed about a week beyond the target date in the work plan. We are scheduled to discuss the draft paper and guidance document prior to submission, with the EAC on September 6, and the final draft cannot be completed until several days after that date.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at:
[redacted]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed this month.

Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting.

Progress: The 50-state (plus District of Columbia) chart created to collect data on provisional voting is complete. We have collected the statutes for all states. State by state summaries of provisional voting have been written for 47 states and D.C. A memorandum summarizing provisional voting litigation is complete. The collection of the documents associated with the litigation is nearing completion.

Challenges: The variety in the form of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The remaining 3 state summaries of provisional voting will be completed by August 8. Analysis of all the information, data, and survey results concerning provisional voting data will be performed in August.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. At the end of July the survey of 400 local election officials was nearing its end, and – as of this writing – is now complete with an analysis and report in draft form. We will rely on the survey results to improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

PROVISIONAL VOTING NARRATIVES

Description: To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

Progress: The state-by-state database is complete, as is a first draft of all state narratives. This work has been shared with the larger team and is being reviewed currently in preparation for constructing analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

Work Plan: In the next month, revisions of the narratives will be complete. In addition to this research, we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms.

SURVEY OF COUNTY ELECTION OFFICIALS

Description: The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting. The survey was designed to determine the following factors related to provisional voting at the county (or equivalent election jurisdiction) level:

- The content and quality of instructions provided to county officials by the states;
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting.

Progress: The fielding and initial analysis of the survey results are complete.

Work Plan: The information derived from the survey will be considered in drafting the analysis and alternatives document required under Task 3.5.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have completed tasks 3.10 and 3.11. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: The chart created to collect data on voter identification is complete and is now being reviewed. Voter identification statutes are being collected.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Work Plan: Review of the voter identification chart, the collection of the voter identification statutes, and the writing of the state by state summaries will be completed by the end of August.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of voter ID requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

Progress: The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. It also contains exit poll data from the 50 states, providing demographic data of voter turnout. The analysis of that data is well underway.

Challenges: The initial methodology that was devised to investigate the questions involved in this part of the study proved insufficient, as the necessary data was unobtainable (the Census Bureau has not yet released their 2004 data). After re-developing an appropriate methodology, the necessary data has been assembled, we have resumed the analysis of this data.

Projection: The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-August.

Task 3.11 Public meeting on Voter Identification Requirements

Description: In early July, we continued our efforts to identify specific Voter ID topics or issues and panelists who could shed light on them. We recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we recommended that one panel include specific legislators on opposite sides of the issue from two different states, Mississippi and Wisconsin. We also discussed adding a researcher to the panel in order to place the debate in a national or historical context. We also recommended a panel of two academic researchers with contrasting points of view, to address the effects of Voter ID provisions under HAVA. In response to our suggestions, EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA.

By mid-July, the EAC had decided which topics and speakers should be invited, however most of those speakers proved unable to attend.

Progress: Tom O'Neill and Dan Tokaji attended the EAC Public Meeting held in Pasadena on July 28. Their presentations at the meeting described the progress of the research and our developing perspective on how to assess the quality of the provisional voting process in the states and identify possible steps for improvement.

Challenges: The changes in the scheduling of the July meeting delayed and ultimately made it impossible to assemble a panel, from which we could derive substantive insight into voter identification issues as they are playing out in the states. Additionally, due to the date of the hearing, the information from the hearing was not available as early in the research process as contemplated in the contract.

Projection: Preparation of the hearing summary will likely be delayed, due to the team's focus on preparation of the analysis and alternatives paper.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

Progress: Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded that as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations might be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to the EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We provided an analysis of the cost and time involved in adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. In the end, the EAC determined that Eagleton should appoint a balanced Peer Review Group of its own choosing. Initial phone calls were made to all members of that group by the end of July, and written invitations and descriptions of the process have gone to all possible members who had indicated their interest in serving.

Challenges: Communications on this issue with the EAC were not clear or timely. The purpose of the PRG is to review our work, and to comment on our research design, which is well underway. We had planned to have the PRG in place early enough in the project to enable them to provide feedback, including the research design. While we are confident in the quality of our work, the experience and perspective of the Peer Review Group will strengthen our analysis and recommendations as we find a way to receive its critique in the more limited time now available. The delay in creating the Peer Review Group will result in a delay in the completion of the final draft of the analysis and alternatives paper and in the preliminary guidance document.

Projections: The work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: The Moritz team has provided Eagleton staff with all completed work. An Eagleton staff member reviews the content and formats of data from all supporting research and will (re-)format once the work has been completed for the compendium and reports submitted to the EAC. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

Projections: By the end of July 2005, much of the above referenced research has been completed. The entire project team has begun the process of reviewing all work, and will combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

Progress: Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Diana Scott/EAC/GOV
08/10/2005 04:07 PM

To klynndyson@eac.gov@EAC
cc
bcc
Subject Rutgers Univ/Eagleton Inst.

History: This message has been replied to.

Karen,

A received a call from Rutgers Univ. regarding the nonpayment of an invoice (submitted on the Form 1034) in July for work done in June. I do not have this invoice, but Joyce's mail logs shows correspondence coming in from Eagleton Inst., in July, addressed to Tom Wilkey which apparently was passed on to you. Is this so? Plz. advise. I'd like to return the call to Rutgers, at least to acknowledge that the invoice was received by us.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

"Laura Williams"
<lauracw@columbus.rr.com>
07/26/2005 02:51 PM

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc
bcc
Subject Webcast of July 28 hearing

History: This message has been replied to.

Hi Karen,
Do you have the details of how we access the webcast of Thursday's hearing. Please let me know. Thanks. I hope all is well with you.

Laura Williams

"Tom O'neill"
[redacted]
07/12/2005 05:25 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Peer Review Group

Karen:

Thanks. I have not heard from Carol about the PRG nor from Julie about plans for the July public meeting. I believe I have sent you copies of my significant emails to them, and will make sure you get all of them in the future.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, July 12, 2005 5:09 PM
To: [redacted]
Cc: Paquette, Carol; Foley, Ned; reed, ingrid; Weingart, John; Laura Williams; Mandel, Ruth
Subject: Re: Peer Review Group

Tom-

I trust you are in contact with Carol and Julie regarding the information on the Peer Review Group and the July 28 hearing at Cal/Tech that you have requested of them, respectively.

While the EAC is a small agency with relatively few reporting layers, I suggest that for all future items requiring feedback and decisions from the EAC, that you are certain to carbon copy me on all e-mails.

This will ensure, that as your primary point of contact, I have a record of all communication that has taken place between the contractor and the agency.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'Neill" [redacted]

07/08/2005
03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>
cc "Laura Williams" [redacted], "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
Subject Peer Review Group

Carol,

After our discussion in New York, you asked me to put in writing our response to the EAC's suggestions for expanding the number and kinds of groups that would review and comment on our work. I hope after your review of this response, we will be able to quickly recruit a balanced Peer Review Group (PRG) and move ahead as the schedule in our work plan indicates. Attached is a revised list of the members we propose for appointment to the PRG. We will probably not be able to persuade all of them to serve, but the number and range of views included on the proposed list should ensure that the resulting group is well-balanced.

Tom

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B. PRG's analysis would be vetted by a defined/select group of local election officials.

C. A defined/select group of advocacy organizations would review the comments of the local election officials

D. Empanel a final focus group of local election officials, advocates and academics for an overall, interactive reaction to the analysis and recommendations.

Project Team Response

Creating three new committees to the review process to supplement the work of the Peer Review Group (PRG) is possible, but would add at least 8 weeks –and possibly 12 weeks-- to our completion of the guidance document on provisional voting. We believe this delay would risk limiting the value of this project for the 2006 election. In addition, the change would add at least $30,000 to the cost of our work. (See the attached table showing the possible effect on our work plan, and note the optimistic assumptions such as the ability to hold a hearing the week after Christmas.). If the same groups were to be engaged in reviewing our work on Voter ID, the time for that work would also have to be stretched at a similar increased cost.

This additional cost and the added time might be worthwhile. . . if the new layers of review were to produce a consensus on how to strengthen the research, sharpen the analysis, and increase the relevance of the Guidance Document. Our team concluded, however, that additional review groups were unlikely to achieve these results.

PRG focuses on quality of research

We believe that our research would be strengthened by a balanced Peer Review Group that will focus on the design of the research and our conduct of it. Based on the EAC's recommendation, we have revised the composition of the PRG to include additional, well-recognized authorities in the field whose perspective is generally agreed to be conservative.

The PRG will focus on the strength of the research design and the quality of our analysis, not on the politics of our recommendations for the guidance document. The PRG will critique the research design and suggest how to strengthen it. Members of the group will review the quality of our analysis so that we can fill holes and correct errors before we make policy recommendations to the EAC. The PRG may or may not meet as a group. The likelihood is that most comments will come in writing from individual members, most of whose schedules would not permit attendance at meetings. In any case, the PRG members will not gather around a table to come to consensus on the study's recommendations.

While using the PRG as a forum to reach consensus on the knotty issues involved does not appear practical, the EAC can benefit from the work of other groups in this regard. It is not necessary for this project to duplicate the deliberative processes of the Carter-Baker Commission, the Century Foundation and the Election Center. The EAC itself as well as the project team can get the benefit of these reports without duplicating this "policy evaluation board" structure as part of this contract.

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In short, the PRG will help ensure that EAC's Guidance Document is founded on a solid base of data and analysis. The review and comment on the Preliminary Guidance Document by the EAC's Board of Advisors and Standards Board will provide participation by important stakeholder groups without the need for the other review committees. This Board is broad-based and represents a key stakeholder group. It also enjoys a significant advantage over a "defined/select" group we might empanel. Any group we define will be open to criticism or charges of bias by representatives of interest groups not represented.

The criticism and charges of bias might be tolerable, but only if we could expect consensus from the "defined/select" group we would appoint. We believe that consensus would be elusive. In empanelling a "defined/select" group, we would naturally look for balance and would appoint members to represent a point of view or an institutional interest. As representatives they would likely feel that they had little choice but to be strong advocates. They would have little incentive to compromise. Our research, as opposed to our policy recommendations, would be better served by the analysis of scholars than by the advocacy of interests.

Policy judgments

We regard the EAC itself as responsible for the policy judgments involved in shaping the Guidance Document. We plan, of course, to respond to the EAC's comments on our preliminary draft, so that the EAC's comments will shape the Preliminary Guidance Document before it is released for public comment. And further revision will follow the public hearing and comments. The EAC and individual Commissioners can always seek comment informally on our analysis or recommendations. That course appears to us preferable to the creation of a new, more elaborate review process.

Carol A. Paquette/EAC/GOV
07/08/2005 05:13 PM

To Juliet E. Thompson/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Fw: Peer Review Group

History: This message has been replied to and forwarded.

Julie -

I don't remember saying much of anything but a few pleasantries to Tom in New York. Did you talk to him about this topic? I'm really at a loss on this. (Maybe I'm having an extended senior moment.)

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
----- Forwarded by Carol A. Paquette/EAC/GOV on 07/08/2005 05:07 PM -----

"Tom O'Neill"
<[redacted]>
07/08/2005 03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>
cc "Laura Williams" <[redacted]> "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
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Tom

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PROPOSED MEMBERSJuly6.doc

"Tom O'Neill"
<[redacted]
07/08/2005 03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>
cc "Laura Williams" <[redacted]>, "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth"
bcc
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PROPOSED MEMBERSJuly6.doc

REVISED
PROPOSED MEMBERS OF PEER REVIEW GROUP

July 6, 2005

Role of the Peer Review Group

Members of the Peer Review Group will review the research design for the project, including the survey of local election officials, the analysis of Voter ID regime on turnout, the state-by-state narrative of developments in provisional voting and voter identification, and the compilation and analysis of statutes, administrative regulations, and case law affecting provisional voting and voter identification. They will also review the report on Analysis and Alternatives. They may review the draft of the Preliminary Guidance Document before it goes to the Board of Advisors for comment.

Members of the group will be respected authorities in their fields and represent a range of opinions and perspectives, although their views on policy will be less important to the study than their views on the quality of the research on which policy recommendations are based.

Ideally, the group would meet once, but even that may not be possible to arrange given the tight time period for the project, the demanding schedules of the members, and their wide dispersal across the county. They will function largely by reviewing written work and making written comments on it. The timing of their involvement is indicated on the work plan.

R. Michael Alvarez, Ph.D.
Professor of Political Science
California Institute of Technology
rma@hss.caltech.edu
626-395-4422

Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College, his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

Guy-Uriel E. Charles
Associate Professor
School of Law
University of Minnesota
342 Mondale Hall
229-19th Avenue South
Minneapolis, MN 55455
612-626-9154
gcharles@umn.edu

Charles teaches and writes on election law, law and politics, and race. He received his B.A. degree in Political Science, *cum laude* from Spring Arbor University and his J.D. from the University of Michigan Law School, where he was Editor-in-Chief of the *Michigan Journal of Race & Law*. He is completing a PhD in political science from the University of Michigan.

Brad Clark
Professor of Law
George Washington University School of Law

Clark received his B.A. in Political Science from Florida State University and his J.D. from Columbia Law School in 1985. He served as a law clerk to the Judge Robert H. Bork on the US Court of Appeals and went on to clerk for Justice Antonin Scalia on the Supreme Court. He has been on the faculty at George Washington University Law School for 12 years, where he has taught Constitutional Law, Federal Courts, and Civil Procedure.

Pamela Susan Karlan
Montgomery Professor of Public Interest Law
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610
(650) 725-4851
karlan@stanford.edu

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Karlan's principal subjects include legal regulation of the political process. She earned her BA, MA, and JD at Yale University, and was previously a Professor at the University of Virginia. She serves on the California Fair Political Practices Commission and is a Cooperating Attorney with the NAACP Legal Defense and Education Fund. She has also been a lecturer at the FBI National Academy. Among her publications, she is a co-author of When Elections Go Bad: The Law of Democracy and the Presidential Election of 2000.

Martha E. Kropf, Ph.D.
Assistant Professor of Political Science
University of Missouri-Kansas City
816-235-5948; KropfM@umkc.edu
Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

Deleted: Deborah Goldberg, Ph.D¶
Program Director, Democracy Program¶
Brennan Center for Justice at NYU School of Law¶
161 Avenue Of The Americas, 12th Floor
New York, NY 10013
212-998-6730
Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.¶

Daniel H. Lowenstein
Professor of Law
School of Law
University of California, Los Angeles
Box 951476,
Los Angeles, CA 90095-1476
(310) 825-4841

Among other courses, Lowenstein teaches Election Law. His textbook, *Election Law* has become a standard in the field. He earned his A.B. at Yale and his LL.B. at Harvard. While working for California's Secretary of State he was the main drafter of the *Political Reform Act* in 1971.He was the first chair of the Fair Political Practices Commission. He has served on the national governing board of Common Cause. He has written on such topics as campaign finance, redistricting, bribery, initiative elections, and political parties.

John F. Manning
Professor
Harvard Law School

Now at Harvard, Manning was appointed Assistant Attorney General for the Office of Legal Counsel by President Bush in 2001. He had been Professor of Law at Columbia Law School. Had had served as Assistant to the Solicitor General of the United States and was an Attorney-Adviser in the Office of Legal Counsel at the Department of Justice during the administrations of President George H. W. Bush and President Reagan. He is a graduate of Harvard College and Harvard Law School.

Tim Storey
Program Principal
Legislative Management Program
National Conference of State Legislatures
7700 East First Place
Denver, CO 80230
303-364-7700
or
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
202-624-5400

Peter G. Veniero, Esq.
Counsel
Sills, Cummis, Epstein and Gross, PC
One Riverfront Plaza
Newark, New Jersey 07102
Tel: 973- 643-7000
Verniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

Plus one or two former, senior election officials to be suggested by the EAC

Deleted: Wade Henderson, Esq.¶
Executive Director¶
Leadership Conference on Civil Rights ¶
1629 K Street, NW, 10th Floor¶
Washington, DC 20006¶
Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU. ¶
¶
Kay Maxwell¶
President¶
League of Women Voters of the U.S.¶
1730 M Street NW, Suite 1000¶
Washington, DC 20036-4508 ¶
202-429-1965¶
Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project. ¶

Deleted: ¶

"Tom O'Neill"
[redacted]
06/20/2005 12:19 PM

To klynndyson@eac.gov
cc
bcc
Subject RE: Revised Work Plan --Gantt Chart

History: This message has been replied to and forwarded.

Karen:

I just downloaded the same file I sent you. It is formatted for printing at 11x17, and I had no difficulty magnifying it to that size on my computer screen. I don't have a printer than handles paper that size so I can't print it myself. The only other format I have available is a Microsoft project file, and that is attached. (Although in my experience pdf files are the easiest to handle.)

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, June 20, 2005 12:04 PM
To: [redacted]
Cc: lotero@eac.gov
Subject: Re: Revised Work Plan --Gantt Chart

Happy Monday, Tom

The EAC Research Associate and I are having difficulty reading the Gantt chart you sent and need it sent in a format in which we can enlarge it to at least 11X 17.

I'd like to be able to share this with the Commissioners later on this afternoon, but understand if your not able to convert it by then.
Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123 GanttChartJune-Aug GanttChartJune-Aug GanttChartMonthly.mpp

Deliberative Process Privilege

Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

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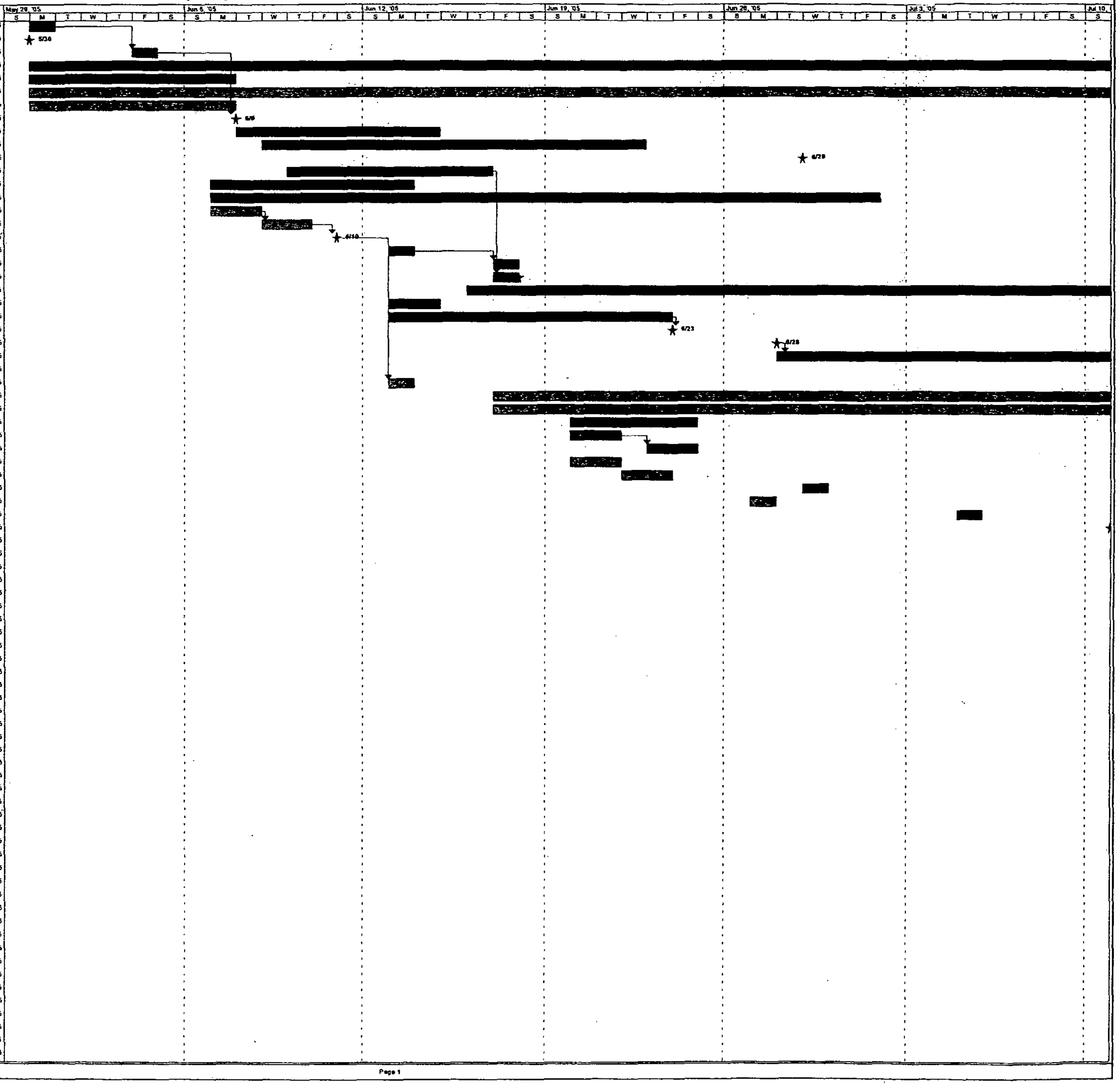

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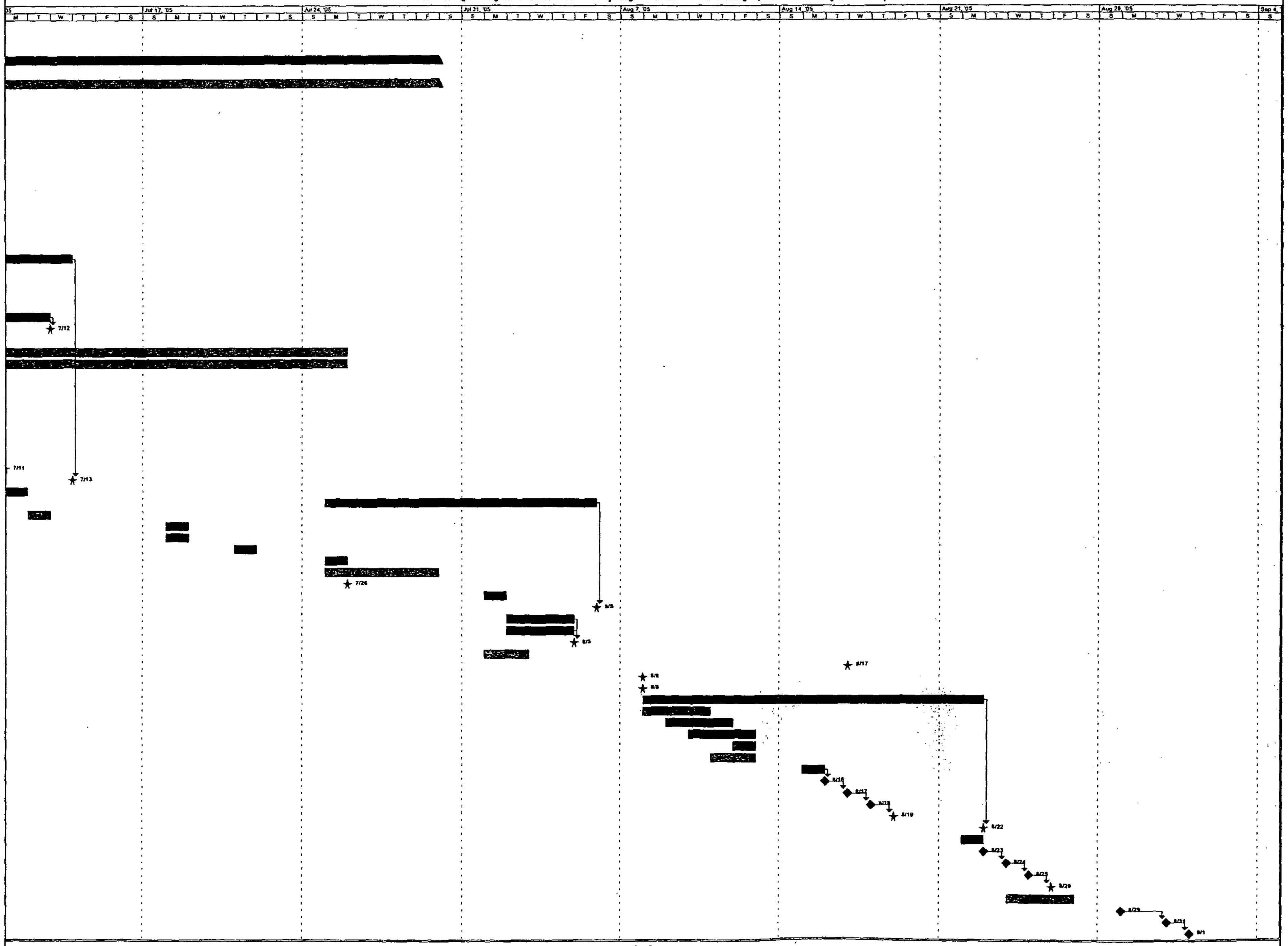

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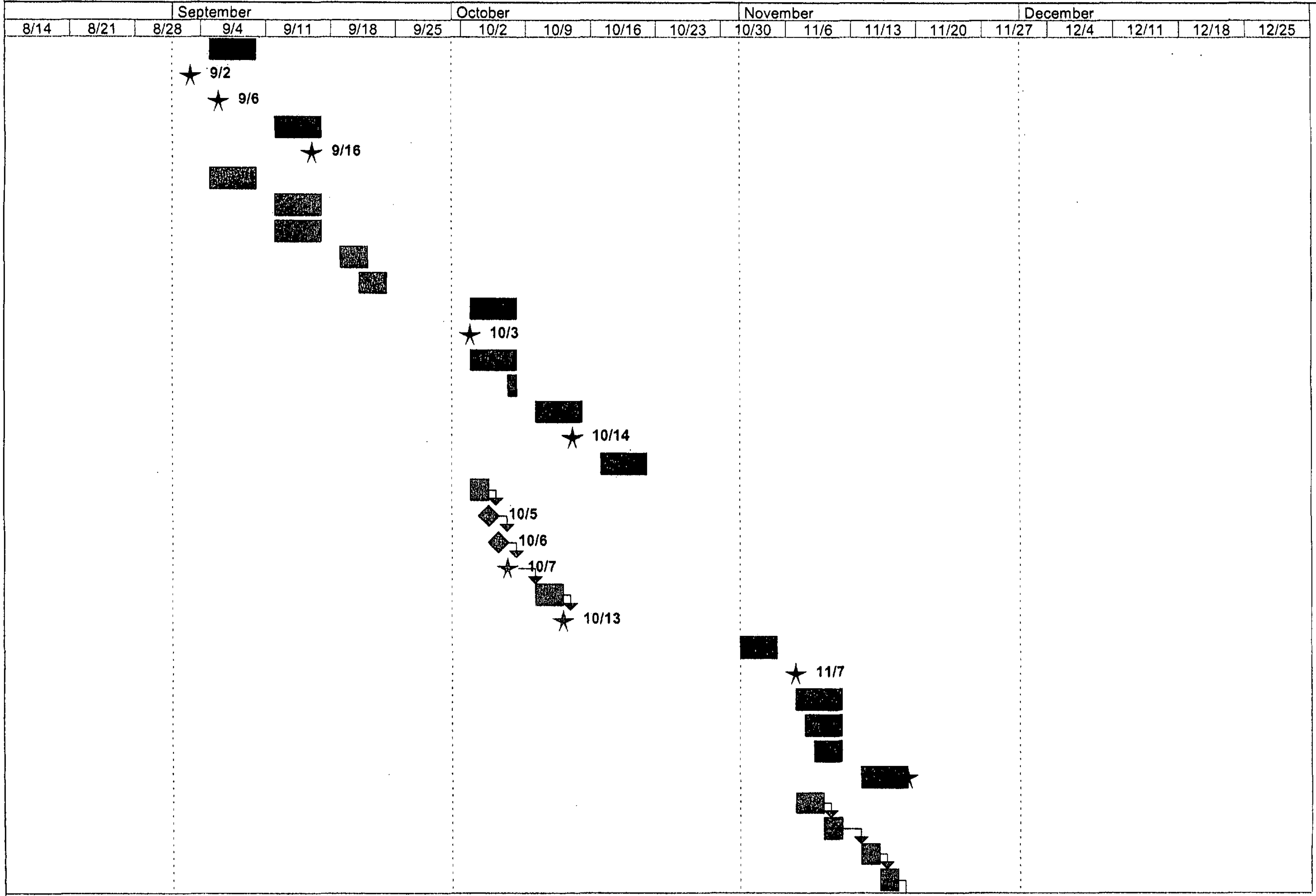

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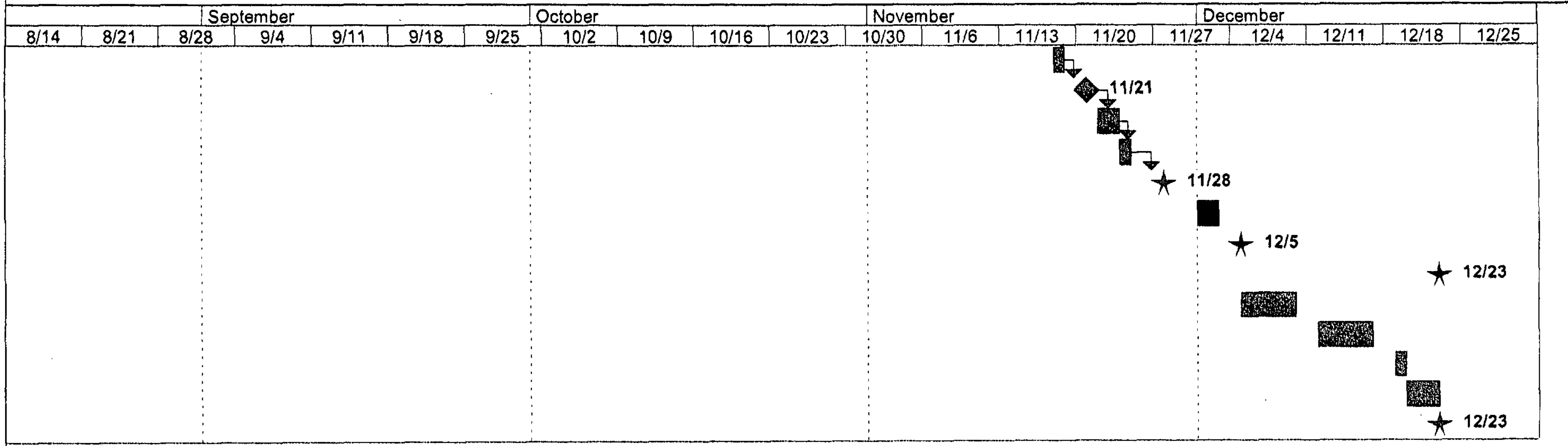

"Tom O'Neill"
[redacted]
06/17/2005 03:43 PM

To klynndyson@eac.gov
cc
bcc
Subject Revised Work Plan –Gantt Chart

History: This message has been replied to and forwarded.

Karen,

Attached is the Gantt chart that you and Carol requested. I think it is most useful if used in conjunction with the work plan table that I sent originally, but whether you use it as freestanding guide to the project or as a supplement, I hope it meets your needs.

The narrative to complement the Gantt chart will be along early next week.

Tom GanttChartFinal.pdf

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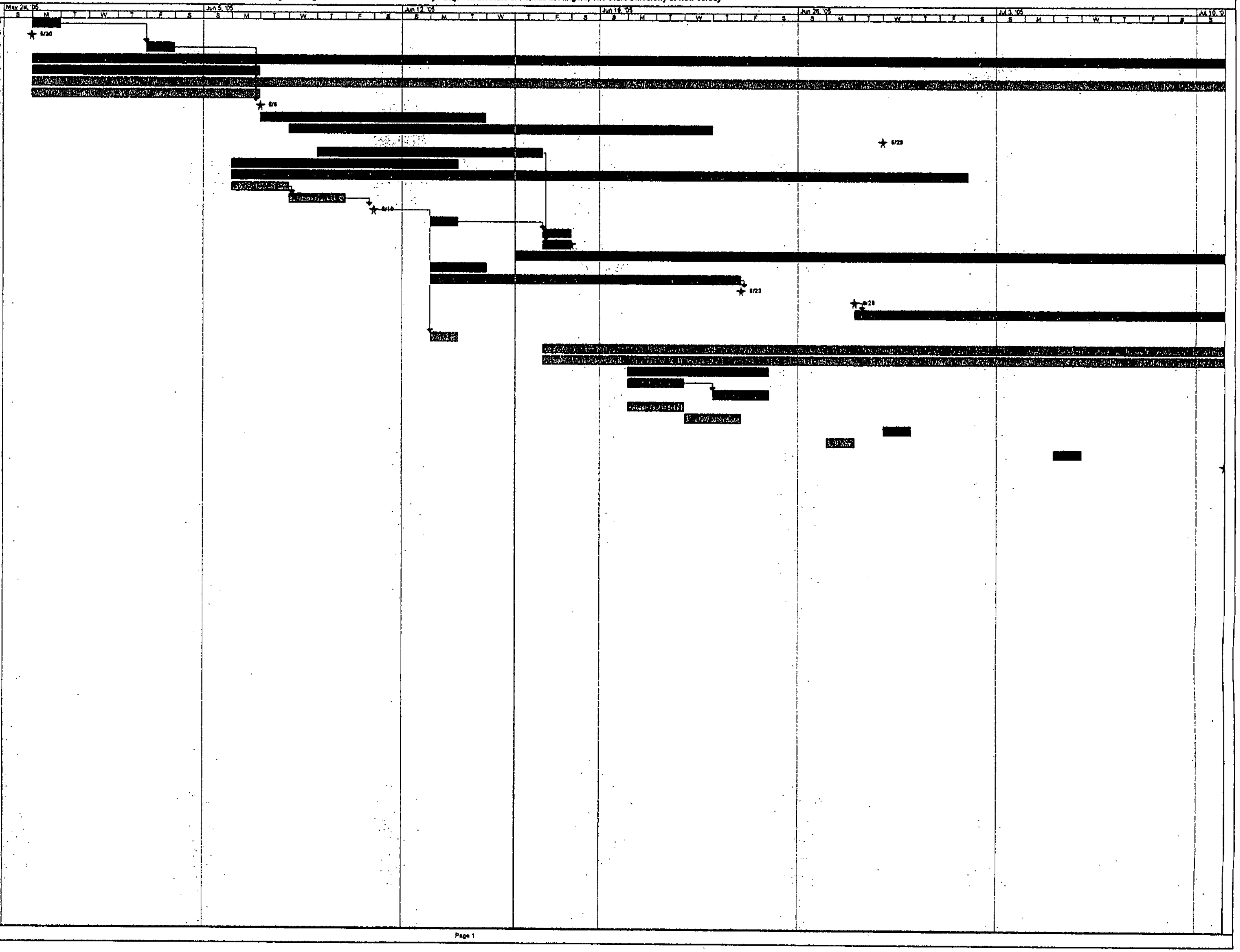

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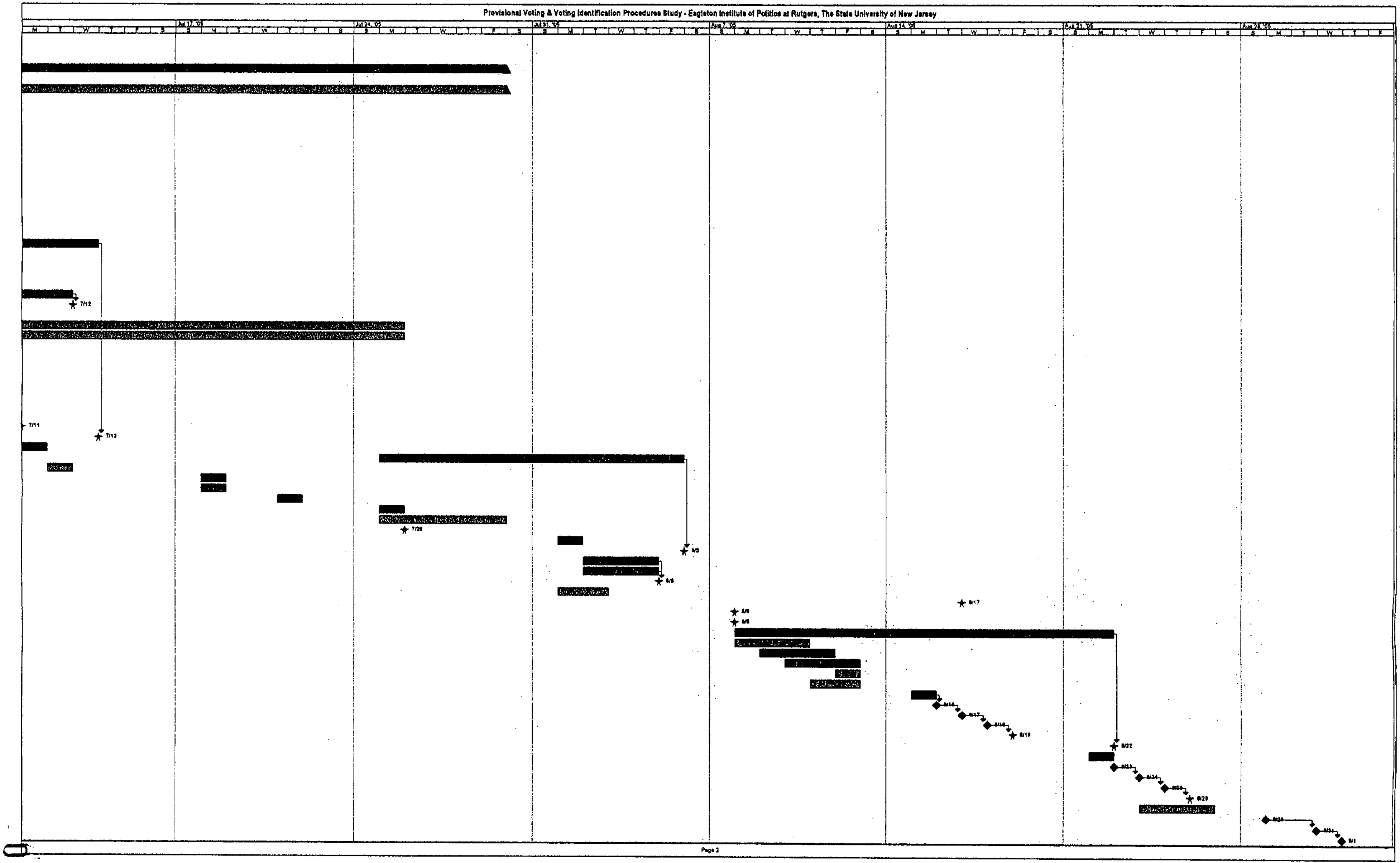

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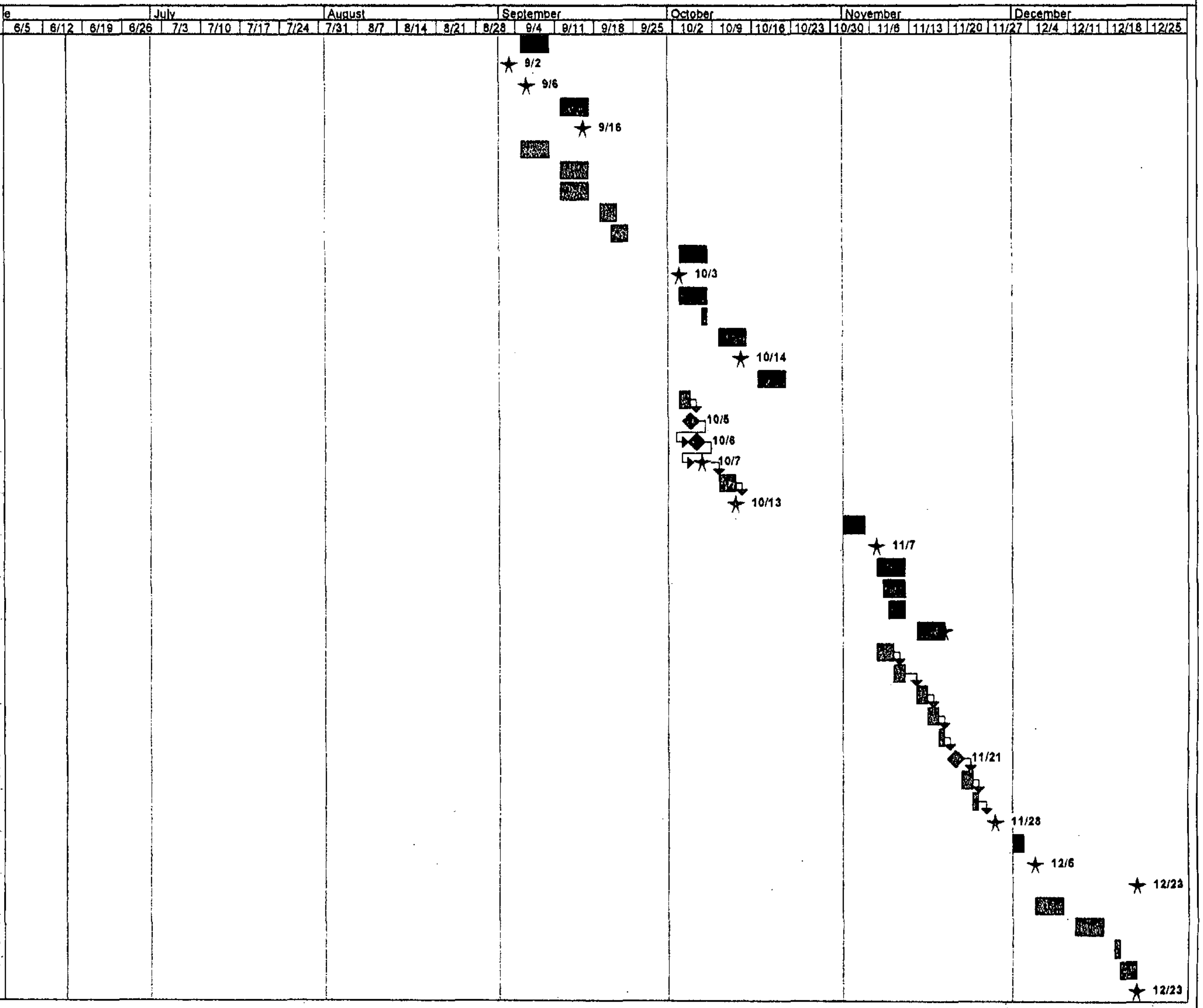
43	Hearing Summary	5 days?	Mon 12/12/05	Fri 12/16/05
44	Analysis of comments	1 day?	Mon 12/19/05	Mon 12/19/05
45	Revise Guidance Document	3 days?	Tue 12/20/05	Thu 12/22/05
46	EAC revises and adopts Final GD	0 days	Fri 12/23/05	Fri 12/23/05



Gracia Hillman/EAC/GOV
06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV
cc Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV, Juliet E. Thompson/EAC/GOV, "Tom Wilkey" [redacted]
bcc
Subject Re: Eagleton draft press release

History: This message has been forwarded.

I have some concerns about the press release. In paragraph two, I am not comfortable with the following language in what I believe is paragraph two: Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006.

It seems to me that EAC will develop the guidance based on Eagleton's findings.

Also, I do not think the press release should contain the list of questions. Are they/we trying to float a trial balloon and elicit initial reaction at this early stage of the study??

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Jeannie Layson
Sent: 06/10/2005 12:57 PM
To: Gracia Hillman; Raymundo Martinez; Paul DeGregorio
Cc: Karen Lynn-Dyson; Carol Paquette; Juliet Thompson
Subject: Eagleton draft press release

Commissioners,
Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

DRAFT FOR APPROVAL

EAGLETON INSTITUTE OF POLITICS WINS $560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION

Rutgers Institute to Study Provisional Voting, Voter Identification Procedures

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a

$560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security.

Questions include:

- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?

- Did local procedures reflect the state's uniform procedures?
- Did all states and election jurisdictions make these procedures available to the public, political parties and candidates before the election?

- To what extent were poll workers appropriately trained on how to administer provisional ballots, including establishing the identity of the potential voter seeking a provisional ballot?

- How were federal funds under the Help America Vote Act used to educate voters about their rights to cast a provisional ballot and where such provisional ballots must be cast to be counted?

- In states where a provisional ballot had to be cast at the voter's assigned polling place or precinct, was information available to poll workers to allow them to determine the voter's assigned precinct and polling place?

- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public

hearings to be held in conjunction with the project.
At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of alternatives to existing practices and procedures.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

"Tom O'Neill"
[redacted]
06/06/2005 04:40 PM

To klynndyson@eac.gov
cc williams.285@osu.edu, [redacted]
tokaji.1@osu.edu, huefner.4@osu.edu, enns.1@osu.edu, sampson.8@osu.edu, foley.33@osu.edu,
bcc
Subject Revised work plan

History: This message has been forwarded.

Karen,

Attached is a schedule that constitutes our revised work plan.

The revisions take into account the need not just to compile and draft the material, but also to provide sufficient time for review of major documents by the EAC staff, our peer review group, and for consideration of key deliverables by the EAC's Boards of Advisors, and then to revise the material appropriately. As a result, the deadlines are slightly longer than reflected in the contract, but all work will be completed by year's end.

The revision also attempts, not with complete success, to stagger the deadlines for the reports and guidance concerning provisional voting with those on voter id. Preparing major documents on both topics simultaneously would strain our abilities, with consequences for the quality of the work.

The work plan will be in constant evolution, with more detail and precision to be added to the months of September through December as we gain experience with the pace of the work. We all look forward with working closely with you to monitor and sharpen the schedule.

Tom

WorkPlanREVEAC.doc

DATE	Project Management	Provisional Voting	Voter ID
JUNE Week of May 30	Update work plan (TON) Meeting of Rutgers team Review updated work plan (PT)	Compile legislation, admin procedures, case law, etc. (MCL, LV)[1] Begin design of survey of local election officials (AR)	Compile legislation, admin procedures, case law, etc. (MCL, LV) Scan for potential panelists. Identify possible hearing panels (TON, IR, MCL)
Week of June 6	**1. Updated work plan to EAC[2]** (TON) Identify possible PRG members (IR, MCL) Subcontract to MCL (JW) Coordinate design of data mngmnt system (LV, MCL)	Gain approvals for survey and contract for database and field work (AR) Scan information sites for narratives of provisional voting in 2004 (TON, AR, LV, IR, DL)	Develop priority list of topics and panelists with rationale (TON) Agree on panel recommendations (PT) List to EAC (TON) EAC approval
Week of June 13	PRG nominations to Team for review (IR) PRG nominations to EAC for review (TON) Develop project website (DL) Set up data mngmnt system (LV, MCL)	Receive election day study and review it (PT) Draft survey instrument and decide sampling technique (AR)	Call panelists (TON) Draft letter for EAC to send to panelists (TON) Develop questions to be addressed by panels (MCL, TON)
Week of June 20	Recruit PRG members (IR)	Team approves survey and reviews with EAC. (AR, TON) EAC approval of survey.	Scan information sites for narratives of Voter ID issues in the states (TON, AR, LV, IR, DL) Data collection on Voter ID & turnout (RAs)
Week of June 27	Background materials to PRG member (IR)	Complete arrangements for survey (AR)	Meet panelists before hearing (TON, IR, AR) **11. HEARING JUNE 30**

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[1] Initials in parentheses indicate who is responsible for the action listed. MCL = Moritz College of Law; RBM= Ruth Mandel, TON = Tom O'Neill; IR = Ingrid Reed; JW = John Weingart; DL = Don Linky; LV = Lauren Vincelli; AR = April Rapp; TT = Theresa Thornhauser, Ras = Research Assistants

[2] Number indicates a deliverable specified in Section 7.0 of the Contract

DATE	Project Management	Provisional Voting	Voter ID
JULY Week of July 4	Status reports to LV for June tasks (all)	Continue collect and compile materials (MCL, LV, RAs)	Continue collect and compile materials (MCL, LV) Data collection (RAs) Draft hearing summary (TON)
Week of July 11	**2. June Progress Report to EAC** (LV, TON) Website operating (DL)	Survey in the field (AR monitors)	Review hearing summary (PT) **12. Hearing Summary to EAC**
Week of July 18	Brief PRG on progress and emerging conclusions (RBM, MCL, TON)	Summarize Election Day Study (TON) Review & discuss Election Day Study (PT)	
Week of July 25	Brief stakeholders on progress and emerging conclusions (IR, TON)	Analyze survey results (AR) Review survey results (PT) Survey results to EAC.	Data analysis of Voter ID & turnout (TON, TT, RAs)

DATE	Project Management	Provisional Voting	Voter ID
AUGUST Week of Aug. 1	Status reports to LV for July tasks (all)	Draft analysis and alternatives (MCL, TON, AR, RAs) Complete compendium (MCL, LV) Review analysis and compendium (PT)	Data analysis of Voter ID & turnout (TT, RAs)
Week of Aug. 8	**2. July Progress Report to EAC** (LV, TON)	Submit analysis and alternatives draft to PRG (TON) Arrange Oct. public hearing (LV)[3] PRG reviews analysis & alternatives	Complete draft report on Voter ID & turnout (TT, Ras)
Week of Aug. 15		PRG comments on analysis & alternatives Revise (TON) Review (PT) Revise (TON) **4/5. Draft report and compendium to EAC**	Review draft report on Voter ID & turnout (PT)
Week of Aug 22		Draft outline of PGD (TON) Review draft outline (PT) Revise (TON) Meet with EAC staff to review draft report and discuss outline of PGD (PT)	Revise report (TT)
Week of Aug. 29		Draft PGD (AR, TON) Review PGD (PT) Revise (AR, TON)	

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[3] Arrangements for public hearings will be coordinated closely with EAC staff.

DATE	Project Management	Provisional Voting	Voter ID
SEPTEMBER	Status reports to LV for August tasks (all) **2. August Progress Report to EAC** (LV)	**6. Draft PGD to EAC for review** (AR, TON) Receive EAC comments; revise **Submit Draft GD to EAC BOA and SB**[4]	Draft Analysis & Alternatives report (MCL, TT, TON) Complete compendium (MCL, LV) Arrange December Public Hearing (LV) Review draft report (PT) Revise (TON)
OCTOBER	Status reports to LV for September tasks (all) **2. September Progress Report to EAC** (LV)	**Meet EAC BOA/ SB** Revise GD **7. Draft GD to EAC for publication** Publication **8. Public Hearing on GD**	Report & Alternatives to PRG PRG Comments Revise (TON) Submit draft to EAC Revise **10/13. Report, Alternatives and Compendium to EAC**
NOVEMBER	Status reports to LV for October tasks (all) **2. October Progress Report to EAC** (LV)	Hearing Summary Analysis of Comments Revise Guidance Document (PT) **9. Final Guidance to EAC for adoption** (PT)	Draft PGD (MCL, TT, TON) Review draft PGD (PT) **14. Draft PGD to EAC for review** (PT) Revise (TON) PGD to BOA/SB **Meet EAC BOA/SB** Revise Draft GD **15. Draft GD to EAC** **Publication**

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[4] BOA = Board of Advisors; SB = Standards Board

DECEMBER	Status reports to LV for November tasks (all) **2. November Progress Report to EAC** **Final reports to EAC** (LV, TON)		**Public Hearing** **Hearing Summary** Analysis of comments (PT) Revise Guidance Document (PT) **17. EAC revises and adopts Final GD**

"Tom O'Neill"
[redacted]
06/06/2005 04:38 PM

To klynndyson@eac.gov
cc williams.285@osu.edu, [redacted], tokaji.1@osu.edu, huefner.4@osu.edu, enns.1@osu.edu, sampson.8@osu.edu, foley.33@osu.edu,
bcc
Subject Revised work plan

Karen,

Attached is a schedule that constitutes our revised work plan.

The revisions take into account the need not just to compile and draft the material, but also to provide sufficient time for review of major documents by the EAC staff, our peer review group, and for consideration of key deliverables by the EAC's Boards of Advisors, and then to revise the material appropriately. As a result, the deadlines are slightly longer than reflected in the contract, but all work will be completed by year's end.

The revision also attempts, not with complete success, to stagger the deadlines for the reports and guidance concerning provisional voting with those on voter id. Preparing major documents on both topics simultaneously would strain our abilities, with consequences for the quality of the work.

The work plan will be in constant evolution, with more detail and precision to be added to the months of September through December as we gain experience with the pace of the work. We all look forward with working closely with you to monitor and sharpen the schedule.

Tom

Juliet E. Thompson/EAC/GOV
04/20/2005 06:07 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Tally vote document on Eagleton Institute

History: This message has been replied to and forwarded.

I've taken a brief look at this. Seems pretty straightforward. However, you might want to talk to Carol about the level of detail (not a whole lot in the memo re other bidders)-- maybe it's not needed. Once you've settled on a final, work with DeAnna to get the other docs necessary for a tally vote.

Juliet E. Thompson
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
04/20/2005 05:34 PM

To Carol A. Paquette/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC
cc Raymundo Martinez/EAC/GOV@EAC
Subject Tally vote document on Eagleton Institute

Carol and Julie-

Here is the draft of the tally vote document on Eagleton.

I'm not at all certain that I have done this correctly, having never done one before.

Also,Carol will have to fill in the contract amount.

K

Tally Vote- Eagleton Institute contract.doc

Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Deliberative Process Privilege

April 20, 2005

MEMORANDUM

TO: EAC Commissioners

FROM: Ray Martinez, Commissioner
U.S. Election Assistance Commission

SUBJECT: Identification of a contractor to perform research and help the EAC prepare policy guidance related to provisional voting and voter identification procedures.

Sec. 302 (a) of the Help America Vote Act of 2002 (HAVA) requires that all states allow the casting of provisional ballots in instances where a voter declares his/her eligibility to vote but his/her names does not appear on the official list of eligible voters, or an election official asserts that a voter is not eligible to vote. The U.S. Election Assistance Commission (EAC) seeks to examine how provisional voting was implemented in the 2004 election cycle and to prepare guidance on this topic for the 2006 election.

HAVA Sec. 303 (b) mandates that first time voters who register by mail are required to show proof of identify before being allowed to cast a ballot. The EAC seeks to examine how these voter identification requirements were implemented in the 2004 election cycle and to prepare guidance on this topic for the 2006 elections.

One of the remedies for a voter not having an acceptable proof of identity is to allow the voter to cast a provisional ballot, either at the polling place or by mail. This linkage between these two HAVA sections provides a rationale for conducting research on these topics in parallel. However, it is anticipated that two separate guidance documents around these issues, would be created.

The EAC issued a Request for Proposal to obtain research assistance that would support the EAC in its development of guidance on provisional voting and on voter identification requirements. Six proposals were received and reviewed by a panel comprised of EAC staff and an election expert.

RECOMMENDATION:

Approve the award of a contract to the Eagleton Institute of Politics, Rutgers, The State University of New Jersey in collaboration with the Moritz College of Law, The Ohio State University in the amount of $XXX, XXX to provide, to the EAC, research services and assistance with developing policy guidance on provisional voting and voter identification procedures.

Carol A. Paquette/EAC/GOV
02/01/2005 02:40 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Fw: Provisional Voting and Voter ID Project

Karen -

Let's talk about this before I respond. Thanks!

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
----- Forwarded by Carol A. Paquette/EAC/GOV on 02/01/2005 02:39 PM -----

"John Weingart"
<Johnwein@rci.rutgers.edu>
01/31/2005 08:49 PM
Please respond to
John.Weingart@rutgers.edu

To cpaquette@eac.gov
cc ireed@rci.rutgers.edu
Subject Provisional Voting and Voter ID Project

Carol - Ingrid Reed, Tom O'Neill and I met today to outline the proposal we will prepare in response to the revised SOW. We will have the proposal to you by no later than next Monday. I hope that timetable is acceptable. In addition, I want to request your comments on two ideas that have emerged since we talked last week.

First, following your suggestion, Ingrid had a good conversation with Ned Foley at OSU which could lead to Rutgers subcontracting to OSU. More specifically, we plan to include a task that would occur early in the contract calling for a systemic collection of relevant laws and court decisions in the 50 states coupled with an analysis of the material with an eye towards commonalities and distinct features as well as aspects that may warrant further exploration as possible models or pitfalls for other states. Our thought is to include both provisional voting and voter ID in this task.

Second, we are considering budgeting approximately $40,000 towards two public opinion surveys. One, suggested by OSU, would be a survey of provisional voters in Franklin County (where OSU is located) and perhaps several Ohio counties. We estimate this would cost about $20,000. The other would be a nationwide survey of college students conducted by Eagleton to gain a comprehensive understanding of student voting experiences in 2004. For this second survey, we believe we will obtain approximately $20,000 from the Carnegie Foundation and do it well if we allocated an additional $20,000 in the EAC budget.

I look forward to hearing from you by e-mail or phone. I am teaching tomorrow (Tuesday) morning but will be in my office from about 1:30 on.

Thanks, John
--
John Weingart, Associate Director
Eagleton Institute of Politics

(732) 932-9384, x.290

Carol A. Paquette/EAC/GOV
01/30/2005 06:21 PM

To johnwein@rci.rutgers.edu;ireed@rci.rutgers.edu;baruch@rci.rutgers.edu;pnjton@aol.com
cc rmandel@rci.rutgers.edu
bcc Karen Lynn-Dyson/EAC/GOV
Subject Statement of Work - Provisional Voting, Voter ID

History: This message has been forwarded.

John et al. -

Here's a revised SOW for this work. I apologize for the formatting; I'm not the greatest at word processing and couldn't figure out how to undo the Microsoft automatic formatting that kicked in part way through the document. But thought it more important to get you the content and have someone make it pretty later. As indicated earlier, the government cost estimate is preliminary; we're open to discussion with appropriate rationale for another figure. Looking forward to working with you!

STatement of Work - Provisional Voting,Voter ID.doc

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

January 30, 2005

PROVIDING EAC ASSISTANCE IN DEVELOPING VOLUNTARY GUIDANCE ON PROVISONAL VOTING AND VOTER IDENTIFICATION PROCEDURES

0.0 Contract Title: Assistance in the Development of Guidance on Provisional Voting and Voter Identification Procedures for the U.S. Election Commission

1.0 Background: Sec. 302(a) of HAVA requires that all States allow the casting of provisional ballots in instances where a voter declares their eligibility to vote but their name does not appear on the official list of eligible voters, or an election official asserts that a voter is not eligible to vote. This section describes several requirements for implementation of provisional voting, but the States have considerable latitude in specifying how to carry out these requirements. The EAC seeks to examine how provisional voting was implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 Federal elections.

HAVA Sec. 303(b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC seeks to examine how these voter identification requirements were implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 elections.

One of the remedies for a voter not having an acceptable proof of identity is to allow the voter to cast a provisional ballot, either at the polling place or by mail. This linkage between these two HAVA sections provides a rationale for conducting research on these topics in parallel. However, it is anticipated that two separate guidance documents will result.

2.0 Objective: The objective of this contract is for EAC to obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics for promulgation to the States in time for implementation for the 2006 Federal elections. The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

3.0 Scope: In general the Contractor shall be responsible for all research and analysis activities, including the conduct of public hearings for fact finding and public comment purposes. However, in light of the urgent need to get this work underway, the EAC has scheduled a public hearing on February 23, 2005, on the topic of provisional voting. The EAC will organize and conduct this hearing, as well as handle the logistics planning and cost. The

Contractor may be requested to comment on the agenda and the invited presenters in advance of this meeting.

An initial framework for provisional voting policy has been set by the court decisions rendered on the election procedures utilized in the 2004 election. The 6th Circuit decision, in particular, has drawn some boundaries which must be given due regard in the course of considering future policy alternatives for provisional voting.

Notice of public meetings and hearings is required to be published in the Federal Register. The Contractor shall be responsible for preparing the notice documents, and the EAC will submit the notices and cover the cost of publication. In addition, draft guidance documents must be published in the Federal Register to obtain public comment prior to their adoption. Again, the Contractor will work with the EAC to prepare the draft documents for publication, which the EAC will submit and cover the cost of publication. Comments received will be provided to the Contractor for analysis and incorporation into the final guidance documents, as appropriate.

4.0 Specific Tasks

For ease of reference, following task 5.3 the remaining tasks are listed separately under the headings of Provisional Voting and Voter Identification Requirements. It is understood that the work on these two topics will be conducted essentially concurrently, with Voter Identification activities starting approximately one month after Provisional Voting.

4.1 Prepare a project work plan. The Contractor shall prepare and deliver a brief Project Plan not later than 10 days after contract award. This plan shall describe how the Contractor will accomplish each of the project tasks, including a timeline indicating major milestones. A single document will be prepared to include both provisional voting and voter identification tasks. The Plan shall be presented at a project kickoff meeting with the EAC Project Manager.

4.2 Submit monthly progress reports. The Contractor shall submit a monthly progress report within 2 weeks of the end of each month. This report shall provide a brief summary of activities performed and indicate progress against the timeline provided in the Project Plan. Any issues that could adversely affect schedule should be identified for resolution. Budget status should also be provided.

4.3 Conduct periodic briefings for the EAC. The Contractor shall periodically meet with the EAC Project Manager and the lead Commissioner for this work to discuss research findings and progress. The Project Plan should make allowance for this activity. The number and frequency of briefings will be determined by the Contractor Project Manager and the EAC Project Manager as the work progresses.

Provisional Voting

4.4 Participate in February 23, 2005, public hearing in Columbus, Ohio, and brief the Project Plan. Prepare document summarizing the proceedings and containing all testimony provided.

4.5 Collect and analyze State legislation, administrative procedures, and court cases. An understanding of the disparities and similarities of how provisional voting was implemented around the country will provide a baseline for the consideration of future approaches. Seventeen States never had provisional voting before HAVA was enacted, while many other States did. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.

4.6 Recommend alternative approaches for future implementation of provisional voting. The Contractor shall conduct a literature review to identify other research results and data available on this topic. The EAC Election Day Survey, for example, contained several questions on provisional voting. The EAC will make these survey data available to the Contractor. Based on their analysis of available research and the results of Task 5.5, the Contractor shall diagnose the problems and challenges of provisional voting implementation and hypothesize alternative approaches.

The Contractor shall assess the efficacy of these alternatives in relation to the following inter-related policy objectives: (1) enabling the maximum number of eligible voters to cast ballots that will be counted; (2) providing procedural simplicity for voters, poll workers, and election officials; (3) minimizing opportunity for voter fraud; and (4) maintaining a reasonable workload for election officials and poll workers. Additional policy considerations may be identified in the course of this research effort. The Contractor shall document and brief these alternatives to the Commission.

4.7 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board of Advisors meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.

4.8 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.

4.9 Arrange one public hearing for receiving public comment on draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the meeting

4.10 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

Voter Identification Requirements

4.11 Collect and analyze State legislation, administrative procedures, and court cases. It is assumed that the collection of information for analysis of voter identification requirements will be performed concurrently with the research for Task 5.5. An understanding of the disparities and similarities of how voter identification requirements were implemented around the country will provide a baseline for the consideration of future approaches. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.

4.12 Convene a half day public hearing on the topic of voter identification requirements. The Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC. The Contractor shall identify three panels of three to four speakers each. The Contractor shall arrange for speaker attendance to include travel and per diem expenses. The EAC will provide publicity for the hearing. The Contractor shall prepare a document summarizing the proceedings and containing all testimony provided.

4.13 Recommend alternative approaches for future implementation of HAVA voter identification requirements. The Contractor shall conduct a literature review to identify other research results and data available on this topic. Based on their analysis of available research and the results of Task 5.11, the Contractor shall diagnose the problems and challenges of voter identification and hypothesize alternative approaches. The Contractor shall coordinate with the EAC to identify appropriate policy objectives by which to assess these alternatives. The Contractor shall document and brief these alternatives to the Commission.

4.14 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.

4.15 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.

4.16 Arrange one public hearing for receiving public comment on the draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the hearing.

4.17 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

5.0 Contract Type. The contract type will be Time and Materials with a ceiling of $700,000.

6.0 Place of performance. The principal place of performance will be the Contractor's place of business. Meetings and occasional work efforts may be performed at the EAC offices.

7.0 Period of Performance. The period of performance is from date of award until October 28, 2005.

8.0 Schedule of Deliverables:

- Project plan – 10 days after contract award
- Progress reports – monthly
- Briefings – as required
- Summary of provisional voting public hearing - 3/11/05
- Analysis report on provisional voting - TBD
- Alternatives report on provisional voting – TBD
- Preliminary draft guidance on provisional voting - TBD
- Draft guidance on provisional voting for publication – 8/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on provisional voting for EAC adoption – 9/2005
- Analysis report on voter identification requirements – TBD
- Public hearing on voter identification requirements – TBD
- Summary of voter identification requirements hearing - TBD
- Alternatives report on voter identification requirements - TBD
- Preliminary draft guidance on voter identification requirements - TBD
- Draft guidance on voter identification requirements for publication – 9/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on voter identification requirements to EAC for adoption – 10/2005

REMAINING STANDARD CONTRACT TERMS TO BE PROVIDED.

Aletha Barrington/CONTRACTOR/EAC/GOV

05/05/2006 10:13 AM

To tanisha.johnsoncampbell@nyu.edu

cc jonathan.nagler@nyu.edu, Karen Lynn-Dyson/EAC/GOV@EAC

bcc

Subject Revised Voter ID Analysis

Good morning Tanisha,

To my understanding Dr. Nagler is out of the office today and I been informed to contact you with any information for him. I am attaching a copy of the Revised Voter ID Analysis. Will you please see that he receives it today? If you have any questions regarding this document feel free to contact me.

Thanks!

Aletha Barrington
Contracts Assistant
U.S. Election Assistance Commission
(202) 566-2209 (office)
(202) 566-3128 (fax)

VoterIDAnalysis VercRev0504.doc

Thomas R. Wilkey/EAC/GOV
06/15/2006 01:14 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Eagleton letter in response to the Chairman

History: This message has been replied to.

We need to discuss

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
06/15/2006 11:26 AM

To twilkey@eac.gov, Bert A. Benavides/EAC/GOV@EAC
cc
Subject Eagleton letter in response to the Chairman

Tom-

Attached is a letter which I have drafted for you summarizing the Commissioner's discussion on the Eagleton contract and which will respond to John Weingart's letter to the Chairman.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005

tel:202-566-3123 Wilkey Eagleton close out letter.doc

Deliberative Process
Privilege

June 15, 2006

John Weingart:
Eagleton Institute of Politics
Rutgers University

Dear John:

During its bi-weekly meeting the four EAC Commissioners met, discussed and reviewed possible next steps with the provisional voting and voter identification studies as well as the Eagleton contract which is scheduled to conclude on June 30, 2006.

The four Commissioners were in agreement that Eagleton's work on the EAC contract should conclude, as scheduled, by June 30, 2006. In preparation for this conclusion the Commissioners have asked that the comments and suggestions which were noted during the EAC's recent Board of Advisors and Standards Boards meeting (and were described in your June xxx letter to Chairman DeGregorio) be included in the final report on provisional which Eagleton will deliver to the EAC on or about June 30, 2006. The Commissioners have determined that they will take this final report and, from it, develop guidance and best practice recommendations that will be presented to the Board of Advisors and Standards Boards for further review.

The EAC Commissioners have also reviewed and considered next steps with the voter identification draft report which Eagleton has prepared. While the final disposition of the results and findings of this study, on the part of the EAC, are still unclear, the Commissioners have asked that the final report of this study also be prepared and submitted to the EAC not later than June 30, 2006.

We look forward to receiving these reports. On behalf of the EAC thank you for the considerable time and energy which the Eagleton/Moritz team has devoted to these critical election issues during the last eighteen months.

Sincerely.

Thomas Wilkey

"Tom O'neill"
[redacted]
05/17/2006 09:25 AM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, foley.33@osu.edu, [redacted] "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu,
bcc
Subject Voter ID Report and Appendices

History: This message has been replied to and forwarded.

Karen,

Attached for review by the Commissioners is the Voter ID Report and its appendices. The appendices are lengthy, but I believe Appendix A should be included in the report sent to the Advisory Boards for review.

Thanks for your forbearance.

Tom O'Neill

Appendices517.doc VoterIDReport05170910.doc

Karen,

John and I reviewed your recent email today, and he asked me to respond.

Important to us is a clear commitment now by the EAC to schedule a presentation of our Voter ID research at the May meeting of the Advisory Board, if its review is required before the paper is published and presented at the EAC's public meeting in June. Your email made no mention of that June public meeting. Our schedule (submitted with the request for the no-cost extension) –and our previous discussion with you—treats that meeting as the key event that will conclude our research under this contract. Therefore, we also look for an explicit understanding that a presentation of our reports will be included in the agenda for that public meeting.

We can deliver a final report on Provisional Voting by May 5 and will be prepared for whatever role we might play at the May 24 meeting of the Advisory Board.

The team is looking forward to a discussion of Tim Vercellotti's revised statistical analysis of Voter ID with the academic reviewers you are in the process of identifying during the week of May 8. Knowing the specific date and time of that discussion in the next day or so would facilitate the participation of appropriate members of our Peer Review Group in that conversation.

Tom O'Neill

From:* klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, April 25, 2006 12:09 PM
To: john.weingart@rutgers.edu
Cc: [redacted]
Subject: Re: Eagleton/Moritz Next Steps

John and Tom-

A couple of items related to timing over the next several weeks:

1. Is it possible to get your final report on Provisional Voting by COB May 5? If so, I can get this to the four Commissioners for final review and approval. It will then be ready to present to the EAC Board of Advisors and Standards Board at the May 24 meeting.

2. As we discussed I have been working to identify a small group of academics(three or so) who will be available to review the Voter ID paper the week of May 8. The focus of the review will be on Tim's research methodology and statistical analysis. I am fairly certain that this review can be done via conference call , preferably on May 11 or May 12. This would assume each of the reviewers will have spent time reviewing the paper, taking extensive notes and summarizing his or her comments. I expect that you all, Tim, Mike Alvarez and any others from your peer review panel, who have an expertise in research and statistics, will be available for the conference call, as well?

3. While I expect you will be able to have your final Voter ID paper to me sometime during the week of May 15, it is not clear whether or not the paper will be presented to the EAC Standards and Advisory Boards the following week. As you know, the paper contains some controversial information, so the Commissioners may elect to spend additional time reviewing the findings among themselves, and before it is formally presented to our Boards.

Let me know if this schedule works for you all.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill"
[redacted]
04/27/2006 03:40 PM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, foley.33@osu.edu, [redacted] tokaji.1@osu.edu
bcc
Subject RE: Schedule for completion of Prov. Voting and Voter ID research

History: This message has been replied to and forwarded.

Thanks, Karen.

Just to be sure that our expectations are clear, I'll summarize the perspective behind the schedule we submitted for the recent extension.

A. Provisional Voting

1. We presented our Provisional Voting report to the commissioners several months ago, revised its organization and clarified findings and recommendations in line with the comments of staff and commissioners, and we researched Tom Wilkey's additional question of the effect of the time for review on the evaluation of provisional ballots, which will be included in the final revision.
2. The final draft will be completed by May 5 .
3. Based on discussions with you and the commissioners we look forward to presenting that revised, final report to the Advisory Board on May 24, following whatever additional review the Commission finds appropriate.
4. Our discussions with Commissioners and staff anticipated that we would make some presentation of the provisional voting work at the Commission's public meeting in June, a presentation that might include revisions occasioned by the comments of the Advisory Board.

B. Voter ID

1. We presented our Voter ID research to the Commissioners in April and are now revising it in line with their comments.
2. That revised research paper will be discussed in mid May by reviewers selected by the Commission. That date was set specifically to allow us to prepare a final report that would be ready for review by the Advisory Board on May 24.
3. We anticipate that the Commission will want the comments of its Advisory Board on the Voter ID report before it receives it in June. (Indeed, we were advised that the Advisory Board members would be most interested in the accuracy of observations or findings specific to their individual states.)
4. The appropriate conclusion for our work is a presentation of findings and recommendations for both Provisional Voting and Voter ID, 2 closely related topics, to the Commission at its public meeting in late June, just a week before the termination of our contract under the extended schedule.

I hope you'll share this outline of our expectations with the others at the Commission involved in assuring a successful completion of this research and analysis.

Tom O'Neill

-----Original Message-----

"Tom O'neill"
[redacted]
05/01/2006 10:03 AM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, john.weingart@rutgers.edu, tokaji.1@osu.edu, ireed@rutgers.edu
bcc
Subject Review of new Voter ID Analysis

History: This message has been replied to.

Karen,

Tim Vercellotti and I have a proposal to meet your schedule for a conference call on May 11 with Jonathan Nagler, Jan Leighley, and Adam Berinsky, as well as a few members of our Peer Review Group.

Tim's revision will not be complete until May 4. We propose to send this new analysis immediately to you for distribution to the reviewers that day. I will need several days more to incorporate Tim's new data in our summary report.

Since the reviewers will be focused on our methodology, they will need several days to digest the new statistical analysis. In the meantime, I will plug the the new statistical conclusions into our report. We will send the revised summary report to you for distribution to the reviewers on May 9, after our team has looked it over to ensure that it reflects Tim's work accurately and that its policy conclusions and recommendations are well supported by the statistical analysis.

The reviewers will then have a couple of days to satisfy themselves about those same issues, and we can meet the tight time schedule.

This schedule is demanding, but meeting it is important to us so that our report is ready to be discussed with the Advisory Board at its meeting on May 24.

Please let me know if this timetable works for you.

Tom O'Neill

Gavin S. Gilmour/EAC/GOV
06/27/2006 11:23 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: Close-out with Eagleton

History: This message has been replied to.

did they ever receive a TforC letter from the contracting officer. If not this should be done... I believe you can find the process and info in your COTR book.

GG

Gavin S. Gilmour
Deputy General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
06/27/2006 09:10 AM

To Gavin S. Gilmour/EAC/GOV@EAC
cc Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: Close-out with Eagleton

No and no.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV
06/26/2006 05:06 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc Thomas R. Wilkey/EAC/GOV, Darrell D. Lee/CONTRACTOR/EAC/GOV
Subject Re: Close-out with Eagleton

Has the conractor deliverd such items? Or, more specifically, has the contractor submitted invoices for work done on these deliverables?

Gg

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 06/26/2006 04:34 PM
To: Juliet Thompson-Hodgkins; Gavin Gilmour
Cc: Thomas Wilkey; Darrell Lee
Subject: Close-out with Eagleton

In anticipation of the conclusion of the Eagleton contract ,Darrell and I are going over contract items which may be outstanding (monthly reports, key deliverables, invoices, etc).

You may recall that the contract called for guidance to be issued on provisional voting and voter identification and for a public hearing to be held on each of these topics.

We possess e-mails and written correspondence which document that EAC elected not to issue guidance or to conduct public hearings on these matters.

In your opinion, is such correspondence sufficient documentation that the contractor was not required to deliver these deliverables?

Thanks for your guidance.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Thomas O'Neill"
<tom_oneill@verizon.net>
06/29/2006 08:42 PM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu
bcc
Subject Final Provisional Voting and Voter ID reports

History: This message has been replied to and forwarded.

Karen,

Attached are our final reports on Provisional Voting and Voter Identification in PDF format. The hard copies with all attachments are on their way to you via Fed Ex.

I understand from your email today that we will be receiving a letter from Tom Wilkey on the final steps to wrap up the contract. All of us are eager to see the Commission move forward with recommendations to the states for best practices on provisional voting and to take the next step on voter id issues by submitting our report to the advisory boards.

Thanks for your long effort to help us see this research through to submission. I hope we'll have a further chance to work together as our recommendations approach implementation.

Hope you enjoy some time off during the coming long weekend and July 4 celebration.

Tom O'Neill VoterIDReport062806INAL.pdf

Report to the U S EAC On Best Practices to Improve Provisional Voting Pursuant to the HELP AMERICA VOTE ACT OF 2002 Public Law 107-252.pdf

Report to the

U. S. Election Assistance Commission

On

Best Practices to Improve Voter Identification Requirements

Pursuant to the

HELP AMERICA VOTE ACT OF 2002

Public Law 107-252

June 28, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

Report to the
U. S. Election Assistance Commission

Best Practices to Improve Voter Identification Requirements

CONTENTS

The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891.It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

Project Management Team

Dr. Ruth B. Mandel
Director. Eagleton Institute of Politics
Board of Governors Professor of Politics
Principal Investigator
Chair of the Project Management Team

Edward B. Foley
Robert M. Duncan/Jones Day Designated
Professor of Law
The Moritz College of Law
Director of Election Law @ Moritz

Ingrid Reed
Director of the New Jersey Project
Eagleton Institute of Politics

Daniel P. Tokaji
Assistant Professor of Law
The Moritz College of Law

John Weingart
Associate Director
Eagleton Institute of Politics

Thomas M. O'Neill
Consultant, Eagleton Institute of Politics
Project Director

Dave Andersen
Graduate Assistant,
Eagleton Institute of Politics

John Harris
Graduate Assistant
Eagleton Institute of Politics

Donald Linky
Senior Policy Fellow
Eagleton Institute of Politics

Sara A. Sampson
Reference Librarian,
Moritz College of Law

Tim Vercellotti
Assistant Research Professor
Assistant Director, Center for Public Interest Polling
Eagleton Institute of Politics

Laura Williams
The Moritz College of Law

Peer Review Group

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

R. Michael Alvarez
Professor of Political Science
California Institute of Technology

John C. Harrison
Massee Professor of Law
University of Virginia School of Law

Martha E. Kropf
Assistant Professor Political Science
University of Missouri-Kansas City

Daniel H. Lowenstein
Professor of Law, School of Law
University of California at Los Angeles

Timothy G. O'Rourke
Dean, Fulton School of Liberal Arts
Salisbury University

Bradley Smith
Professor of Law
Capital University Law School

Tim Storey
Program Principal
National Conference of State Legislatures

Peter G. Vemiero
former Attorney General, State of New Jersey
Counsel, Sills, Cummis, Epstein and Gross, PC

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

- Opponents seek to forestall more stringent identification requirements, such as government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate. It inquires whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout. That analysis would constitute an important first step in assessing tradeoffs between ballot security and ballot access. The aim of this research is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis examined the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information (such as the specific reasons some potential voters are not allowed to cast a regular ballot) that that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on

turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:[1] the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.[2] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, the different statistical methods and two different sets of data on turnout in 2004 election used in the study point to the same general finding. Stricter voter identification requirements (for example, requiring voters to present non-photo ID compared to simply stating their names) were correlated with reduced turnout in the models employed, as described in detail in Appendix C. [3] As explained below, these models find that a statistically

---

[1] See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

[2] The EAC has contracted with other researchers to study vote fraud issues.

[3] Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout.* Using the aggregate data, photo ID did not have a significant effect on turnout, possibly because in the

significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. (But note that in the model using the aggregate data, photo ID did not have a significant effect on turnout. The reason may have been that in this election, each state with a photo ID requirement provided an alternate way for those without a photo ID to cast a regular ballot.) Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible voters, however, the tradeoffs between ballot security and ballot access cannot be assessed.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.[4] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state

---

2004 election every state requiring photo ID provided an alternative way to cast a regular ballot for those voters who lacked photo identification. The individual data from the Current Population Survey did show a significant effect, but only for the overall sample and for white voters, which may be an artifact of the large sample size.

[4] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always

for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, for the maximum ID requirements, the match-signature requirement and the provide-a- non-photo-ID requirement, but not the photo ID requirement, were all correlated with lower turnout compared to requiring that voters state their names. When the registration closing deadline was added as an independent variable in the aggregate analysis, signature match and non-photo id remained significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such

knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[5] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

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[5] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. A "Voter Impact Statement" would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC might also use the information reported by the states to encourage further assessment by the states of the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
    I. Useful information could be supplied by state-sponsored surveys of voters conducted by local election officials. Such surveys would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks

statutory or regulatory requirements. Such reports should be available to the public.

4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[6], and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is less certain.

SUMMARY OF RESEARCH

Background and Approach of the Study

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

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[6] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967) found that local variations in the rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.
- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics.* 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.

- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior.* 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.

- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.
- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.*, 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [7] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

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[7] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[8]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[9] Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that

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[8] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[9] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[10] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.[11] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

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[10] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[11] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest seven questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[12]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[13]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[14]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[15] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

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[12] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[13] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[14] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[15] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[16]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it, intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

Voter ID and Turnout

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004.These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[17] Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.[18]

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the

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[16] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

[17] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

[18] As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.[19] Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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[19] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

TABLE 1 – Voter ID Requirements[20]

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

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[20] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements (r = -.30, p < .05). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant (r= -.20, p = .16). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.2 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.4 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables.[21](Dichotomous variables reflect either the presence or absence of a characteristic. In the dummy variable for non-photo ID, a state would be coded as 1 if it required non-photo ID, and 0 otherwise.)

Voter identification requirements are just one factor that might affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American [22]
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering

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[21] The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

[22] The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

The dependent variable in each model using the aggregate data was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that the stricter voter identification requirements of matching one's signature to a signature on file with election authorities or presenting a non-photo ID are associated with lower turnout compared to turnout in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. (A "dummy variable" represents a particular attribute and has the value zero or one for each observation, e.g. 1 for male and 0 for female.) Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election. [23]

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[23] This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum requirements, a signature match and non-photo identification –but not photo identification-- were correlated at a significant level with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.[24] Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[25] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens, who in this survey were not asked the voter registration and turnout questions. In

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[24] For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[24] Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

[25] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have influenced turnout in 2004.[26] The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[27]

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.[28] Table 3 below shows predicted probabilities (calculated from the probit

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[26] The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

[27] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[28] A probit model is a popular specification of a generalized linear regression model, using the probit link function.

coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.[29]

Table 3. Predicted probability of voter turnout – all voters

	Maximum requirement	Minimum requirement
State name	91.7%	91.5%
Sign name	89.9%	90.2%
Match signature	Not significant	Not significant
Non-photo ID	89.0%	89.0%
Photo ID	88.8%	----
Affidavit	----	87.%5
Total difference from "state name" to "photo ID" or "affidavit"	**2.9%**	**4.0%**
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from stating one's name to providing photo identification or an affidavit , with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[30] In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those with fewer years of education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum

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[29] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[30] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.[31] The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

More rigorous voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data,

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[31] Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

In the aggregate data, the match-signature requirement and the provide-a-non-photo ID requirement were correlated with lower turnout compared to requiring that voters state their names. But the photo-ID requirement did not have an effect that was statistically significant, possibly because in 2004 each state requiring a photo-ID provided an alternative way to cast a regular ballot for voters who lacked that document.

In the model using the individual-level data the signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names (in the entire sample and for white voters, but the statistical significance may be an artifact of the very large sample size). That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*).. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.[32] Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a

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[32] Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a

balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgement in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased.[33]

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[33] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Provisional Voting
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252

June 28, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

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Report to the
U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

CONTENTS

The Research Team

This research report on Provisional Voting in the 2004 election is part of a broader analysis that also includes a study of Voter Identification Requirements, a report on which is forthcoming. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891.It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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The Peer Review Group improved the quality of our work by critiquing drafts of our analysis, conclusions and recommendations. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in the policy recommendations of the report.

EXECUTIVE SUMMARY

Background and Methodology

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005.

The Help America Vote Act of 2002 (HAVA, (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient. Section 302(a) of HAVA required states to establish provisional balloting procedures by January 2004.[1] The process HAVA outlined left considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voter eligible to cast a provisional ballot that will be counted and in what jurisdiction (precinct or larger unit) the ballot must be cast in order to be counted.[2]

The general requirement for provisional voting is that, if a registered voter appears at a polling place to vote in an election for Federal office, but either the potential voter's name does not appear on the official list of eligible voters for the polling place, or an election official asserts that the individual is not eligible to vote, that potential voter must be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the EAC's Election Day Survey, "first-time voters who registered by mail without identification and cannot provide identification, as required under HAVA. . ." [3] HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. Election administrators are required by HAVA to notify individuals of their opportunity to cast a provisional ballot.

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[1] The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions. " See www.electioncenter.org .

[2] The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell, 387 F.3d565* (6th Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

[3] The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See http://wired.com/news/evote/0,2645,63298,00.html . (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004 .)

Our research began in late May 2005. It focused on six key questions raised by the EAC.

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, we:

1. Surveyed 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.[4]
3. Analyzed statistically provisional voting data from the 2004 election to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification.
4. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

KEY FINDINGS

Variation among the states

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63%, were counted. Provisional ballots accounted for a little more than 1% of the final vote tally. These totals obscure the wide variation in provisional voting among the states.[5]

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[4] Attachment 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures. It also describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

[5] HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

- Six states accounted for two-thirds of all the provisional ballots cast.[6]
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.
- States with voter registration databases counted, on average, 20% of the provisional ballots cast.
- States without databases counted ballots at more than twice that rate: 44%.[7]
- States that provided more time to evaluate provisional ballots counted a greater proportion of those ballots. Those that provided less than one week counted an average of 35.4% of their ballots, while states that permitted more than 2 weeks, counted 60.8%.

An important source of variation among states was a state's previous experience with provisional voting and with the fail-safe voting provision of the National Voting Rights Act. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.[8] Part of that difference was due to how states had implemented the National Voting Rights Act, particularly in regard to voters who changed address within weeks of the election. Voters in California, for example, who moved within their county must cast a provisional ballot, the information from which is used to update the voter's address. Other states, Tennessee for example, found that some fail-safe voters were reluctant to vote by provisional ballot. As a result, Tennessee abandoned provisional voting for those who moved within counties and allows failsafe voters cast a regular ballot. Relatively fewer provisional ballots would tend to be cast in such states.

Variation within states

Within states, too, there was little consistency among different jurisdictions. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This variation suggests that additional factors (including the training of election judges or poll workers) beyond statewide factors, such as experience or the existence of voter registration databases, also influence the use of provisional ballots.

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot.

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[6] California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

[7] As the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without." Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

[8] See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

Resources available to administer provisional voting varied considerably among and within states. Differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.

In precincts located in districts where many voters live in poverty and have low levels of income and education, the voting process, in general, may be managed poorly. Provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

The lessons of litigation

Successful legal challenges highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. Most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots. This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right – the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

States move to improve their processes

Shortly after the 2004 election, several states came to the conclusion that the administration of their provisional voting procedures needed to be improved, and they amended their statutes. The new legislation highlights areas of particular concern to states about their provisional voting process.

- Florida, Indiana, Virginia, and Washington have clarified or extended the timeline to evaluate the ballots.

- Colorado, New Mexico, North Carolina, and Washington have passed legislation focused on improving the efficacy and consistency of the voting and counting process.
- Colorado, Arkansas, and North Dakota took up the issue of counting provisional ballots cast in the wrong precinct.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices that draw on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting. The important effect of experience on the administration of the provisional ballot process indicates that the states have much they can learn from each other.

SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

- Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
- Do the procedural requirements of the system permit cost-efficient operation?
- How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

Court decisions suggest areas for action

The court decisions following the 2004 election also suggest procedures for states to incorporate into their procedures for provisional voting. EAC should recommend to the states that they:

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide effective materials to be used by local jurisdictions in training poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.

Assess each stage of the provisional voting process

Beyond the procedures suggested by court decisions, states should assess each stage of the provisional voting process. They can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process.

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot. Our recommendations for best practices to avoid error at the polling place include:

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.
- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.
- Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. Best practice for states should provide guidelines (as do Connecticut and Delaware) to estimate the supply of provisional ballots needed at each polling place.

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots

are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.

- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Our research did not identify an optimum division of the five weeks available.

- The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- Best practice for the states is to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

Final observation

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

Provisional Voting in 2004

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.

These totals obscure the wide variation in provisional voting among the states.[9] Six states accounted for two-thirds of all the provisional ballots cast.[10] State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000 – from a high of 7% in Alaska to Vermont's 0.006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted provisional ballots at more than twice that rate, 44%.

An important source of variation was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.[11]

- The percentage of the total vote cast as provisional ballots averaged more than 2% in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%. [12]
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

Those voting with provisional ballots in experienced states had their ballots counted more frequently than those in the new states. This experience effect is evidence that there is room for improvement in provisional balloting procedures, especially in those states new to the process.[13] That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

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[9] HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

[10] California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

[11] See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

[12] To compensate for the wide differences in vote turnout among the 50 states the average figures here are calculated as the mean of the percent cast or counted rather than from the raw numbers of ballots cast or counted.

[13] Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's " 6-day time limit to process provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC can facilitate the exchange of experience among the states and can offer all states information on more effective administration of provisional voting.

Concluding optimistically that experience will make all the difference, however, may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Our current understanding of how provisional voting worked in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. The training they offer poll workers about provisional ballots may not be as frequent or effective as in other states. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.[14]
2. "Old" states may devote fewer resources to updating their registration files or databases because they consider provisional ballots as a reasonable fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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[14] Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, "no state gave the voter the right to find out the status of their ballot after the election. " Now all offer that opportunity. See Bali and Silver, "The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000," manuscript, Department of Political Science, Michigan State University. Resisting HAVA's mandates through foot-dragging lacks any legitimate foundation in law or policy.

- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, and some required provisional voters to execute an affidavit. [15]
    - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
    - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
    - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
    - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office
- Voter registration databases provided information that reduced the number of provisional ballots counted.[16] In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted only ballots cast in the proper precinct counted an average of 42% of provisional ballots. [17]
    - In experienced states, the disparity was even more pronounced: just over half of provisional ballots cast were counted in states requiring in-district ballots, while more than two-thirds were counted in those allowing out-of-precinct ballots.
    - If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.[18]

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[15] See Table 2 in Appendix 2 for information on the verification method used in each state.

[16] The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

[17] The Election Day Survey concluded that : "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots. [19]
    - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks[20].
    - Those states that permitted less than one week counted an average of 35.4% of their ballots.
    - States that permitted between one and two weeks counted 47.1%.
    - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast[21].
    - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

Variation Within States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors beyond statewide factors, such as verification requirements or the time provided for ballot evaluation, also influence the provisional voting process. Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."[22]

Electionline reported that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the

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[18] This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

[19] See Appendix, Relationship Between Time Allotted to Verify Provisional Ballots and the Level of Ballots that are Verified, David Andersen, The Eagleton Institute of Politics

[20] Many thanks to Ben Shepler, of the Moritz College of Law, for assembling complete data on the time requirements states permitted for the counting of provisional ballots.

[21] 43 states are included in this analysis, including Washington D.C. The 7 election-day registration-states are omitted, as is Mississippi, which never provided data on provisional ballots. North Carolina is also omitted from the regressions, as it does not have a statewide policy on how it verifies provisional ballots.

[22] Recommendation 2.3.2 of the Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.16. The report also observed that, ". . .different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important in such districts. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of the complexity of the problem and a lack of important information. An ideal assessment of how well provisional ballots worked in 2004 would require knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. Information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

Since we do not know how many registered voters who might have voted but could not, we cannot estimate with any precision how effective provisional voting was in 2004. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the

2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

Estimates of Votes Lost In 2000 Presidential Election

Votes Lost (Millions)	***Cause***
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

Table 1 Cal Tech – MIT Voting Technology Project Estimates
4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. In 2004, about 1.2 million provisional voters were counted. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)[23]. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states[24] came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

- Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.[25]

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[23] Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems. After each election the CPS asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or they were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

[24] Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

[25] The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the *entire department's employees were mobilized to process provisional ballots.*" The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when

- Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

Litigation
Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted by absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

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voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny." See Appendix 7, GAO, "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

RECOMMENDATIONS

Because every provisional ballot counted represents a voter who, if the system had worked perfectly, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that ballot, but the voter will still have to vote provisionally. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and particularly within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

Self-evaluation of Provisional Voting –4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention to reduce the inconsistencies noted in our analysis. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result-- well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."[26]

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant re-canvassing.[27] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[28]
- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [29] Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll

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[26] The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

[27] See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

[28] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

[29] *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [35] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[36] States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. Public recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underlines the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."[37] Nonetheless, the *Panio v. Sutherland*[38] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

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[35] Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

[36] Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights..Conn. Gen. Stat. Ann. § 9-232j.Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

[37] The Century Foundation, op. cit.

[38] 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.[39]
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.[40] While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.[41] Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

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[39] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H)..

[40] See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

[41] Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[42]

Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
RRD	(Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days

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[42] 8 CCR 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot.

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma[43] or the Baldridge Quality

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[43] Six Sigma is a measure of quality that strives for near perfection. Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects (driving towards six standard deviations between the mean and the nearest specification limit) in any process -- from manufacturing to transactional and from product to service.

process [44] to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
   - -- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
   - -- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
   - -- Measures of variance among jurisdictions.
   - -- Number of poll workers trained in administration of provisional voting by polling place.
   - -- Number of jurisdictions posting information on provisional voting in the polling place.
   - -- Time required to evaluate ballots by jurisdiction.

Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

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[44] The Baldrige Criteria for Performance Excellence provide a systems perspective for understanding performance management. They reflect validated, leading-edge management practices against which an organization can measure itself. With their acceptance nationally and internationally as the model for performance excellence, the Criteria represent a common language for communication among organizations for sharing best practices. The Criteria are also the basis for the Malcolm Baldrige National Quality Award process.

ATTACHMENT 1 – Data Sources for Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The variables used to analyze a state's use of provisional ballots were:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and included it in our analysis.

New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting,[45] but condensed its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We included in the list of "Old States" all states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots. States in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

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[45] This study can be found at: http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline's map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct's list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter's name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island's first use of provisional voting was in 2004 and, therefore, classified the state as "new" to the system of provisional balloting.

Table 1
CATEGORIZATION OF STATES -- Old and New

Old States	**New States**	**HAVA Exempt or NA**
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
26	**18**	**7**

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[46] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found it had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election[2]. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

Table 2
CATEGORIZATION OF STATES – Counting Out-Of-Precinct Ballots

Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Georgia	Connecticut	New Hampshire
Illinois[47]	Delaware	North Dakota
Kansas	District of Columbia	Wisconsin
Louisiana	Florida	Wyoming
Maryland	Hawaii	
New Mexico	Indiana	
North Carolina	Iowa	
Oregon	Kentucky	
Pennsylvania	Massachusetts	
Rhode Island	Michigan	
Utah	Missouri	
Vermont	Montana	
Washington	Nebraska	
	Nevada	
	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
16	27	7

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[46] "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf

[47] In Illinois, it is not clear that all counties followed this procedure. Some counties may not have counted out-of-precinct ballots.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

Table 3
CATEGORIZATION OF STATES – Ballot Evaluation Methods

Signature Match	Data Match	Affidavit	Return with ID	NA
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina*
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

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* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

Table 4
Updated information by State

Received Updated Data	Did Not Receive Updated Data
California	Alabama
District of Columbia	Alaska[48]
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland[49]	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska[50]	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
26 States	**25 States**

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[48] Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

[49] Maryland reported provisional ballots that were counted per county, but not number cast.

[50] Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

Data Differences

The data used in this study differ from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

Table 5
Data Differences with the Election Day Study

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?[51]
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	53,698/26,092	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

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[51] Data not provided by the state itself is taken from Electionline figures.

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P.S. 05-14-2007

Darrell D. Lee/CONTRACTOR/EAC/GOV
07/20/2006 10:04 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
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RECOMMENDATIONS

Because every provisional ballot counted represents a voter who, if the system had worked perfectly, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that ballot, but the voter will still have to vote provisionally. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and particularly within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Self-evaluation of Provisional Voting -4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

- Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
- Do the procedural requirements of the system permit cost-efficient operation?
- How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

Court decisions suggest areas for action

The court decisions following the 2004 election also suggest procedures for states to incorporate into their procedures for provisional voting. EAC should recommend to the states that they:

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide effective materials to be used by local jurisdictions in training poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.

Assess each state of the provisional voting process

Beyond the procedures suggested by court decisions, states should assess each stage of the provisional voting process. They can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process.

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot. Our recommendations for best practices to avoid error at the polling place include:

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.
- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.
- Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. Best practice for states should provide guidelines (as do Connecticut and Delaware) to estimate the '. supply of provisional ballots needed at each polling place.

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots, are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.
- If a state does require voters to appear at their assigned precinct, where the same polling site serves more

than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.

- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Our research did not identify an optimum division of the five weeks available.

- The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- Best practice for the states is to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

Final observation

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention to reduce the inconsistencies noted in our analysis. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result-- well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."[26]

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant re-canvassing.[27] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.[28]
- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [29] Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll

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[26] The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

[27] See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

[28] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

[29] *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

workers may need appropriate training to understand their duty to give such voters a provisional ballot.[30]

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."[31]
2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[32]
3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

B. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[33] Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."[34] A state

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[30] *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

[31] Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

[32] The Century Foundation, op. cit.

[33] 8 Colo. Code Regs. § 1505-1, Rule 7.1.

[34] 2005 N.M. Laws 270 page no. 4-5.

statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [35] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[36] States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. Public recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underlines the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."[37] Nonetheless, the *Panio v. Sutherland*[38] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

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[35] Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

[36] Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j.Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

[37] The Century Foundation, op. cit.

[38] 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.[39]
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct. [40] While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. [41] Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

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[39] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) ~~(H)~~.

[40] See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

[41] Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[42]

Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
RRD	(Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days

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[42] 8 CCR 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot.

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma[43] or the Baldridge Quality

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[43] Six Sigma is a measure of quality that strives for near perfection. Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects (driving towards six standard deviations between the mean and the nearest specification limit) in any process -- from manufacturing to transactional and from product to service.

process [44] to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
   - -- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
   - -- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
   - -- Measures of variance among jurisdictions.
   - -- Number of poll workers trained in administration of provisional voting by polling place.
   - -- Number of jurisdictions posting information on provisional voting in the polling place.
   - -- Time required to evaluate ballots by jurisdiction.

Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

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[44] The Baldrige Criteria for Performance Excellence provide a systems perspective for understanding performance management. They reflect validated, leading-edge management practices against which an organization can measure itself. With their acceptance nationally and internationally as the model for performance excellence, the Criteria represent a common language for communication among organizations for sharing best practices. The Criteria are also the basis for the Malcolm Baldrige National Quality Award process.

APPENDIX C: PROVISIONAL BALLOT LITIGATION BY ISSUE

Moritz College of Law
June 28, 2006

Overview:

- **Wrong precinct**
    - *League of Latin American Citizens (LULAC) v. Arizona Secretary of State Jan Brewer*
    - *Colorado Common Cause v. Donetta Davidson*, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)
    - *AFL-CIO v. Hood,* 885 So. 2d 373 (Fla. 2004)
    - *The Florida Democratic Party v. Hood,* 342 F. Supp. 2d 1073 (N.D. Fla. 2004)
    - *Dean Brooks et al. v. Attorney General Tom Miller*
    - *Bay County Democratic Party, et al v. Land et al,* 347 F. Supp. 2d 404 (E.D. Mich. 2004)
    - *Claude Hawkins, Brian Morahan, Susan Schilling and the Missouri Democratic Party v. Matt Blunt*
      U.S. District Court Western District of Missouri, Case No. 2:04-cv-04177
    - *Panio v. Sunderland,* 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)
    - *James v. Bartlet*, 607 S.E. 2d 638, 359 N.C. 260 (N.C. 2005)
    - *The League of Women Voters of Ohio et al v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004)
    - *Sandusky County Democratic Party v. Blackwell, 387 F.3d 565 (6th Cir. 2004) – Opinion in Sixth Circuit case, 10/23/04*
      Sandusky County Democratic Party v. Blackwell, 361 F. Supp. 2d 688 (6th Cir. 2005) – Opinion in District Court in Plaintiff's request for attorney's fees, which was granted, 3/3/05
    - *State of Ohio ex rel. Mackey et al v. Blackwell et al,* No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)
- **Absentee voters who did not receive a ballot who wish to vote provisionally**
    - *Colorado Common Cause v. Donetta Davidson,* No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)
    - *White v. Blackwell, et al.*
      U.S. District Court for the Northern District of Ohio, Case No. 3:04CV 7689
- **Equal protection – inconsistent treatment or distribution of provisional ballots**
    - *Schering v. Blackwell*
      U.S. District Court for the Southern District of Ohio, Case No. 1:04-cv-755.
    - *State of Ohio ex rel. Mackey et al v. Blackwell et al,* No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)
- **Provisional ballots which were incomplete in some way (not signed, do not display election district, etc.)**
    - *Panio v. Sunderland,* 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)
    - *Borders v. King County*
      Superior Court, Chelan County, No. 05-2-00027-3
- **Requirement for provisional ballot to be counted – ID required**

  - *Bay County Democratic Party, et al v. Land et al,* 347 F. Supp. 2d 404 (E.D. Mich. 2004)
  - *The League of Women Voters of Ohio et al v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004)
- **Verification procedure for provisional ballots**
  - *State of Ohio ex rel. Mackey et al v. Blackwell et al,* No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)
  - *Borders v. King County*
    Superior Court, Chelan County, No. 05-2-00027-3
  - *McDonald, et al v. Secretary of State,* 103 P.3d 722 (Wash. 2004)
  - *Washington State Democratic Party v. King County Records, Elections & Licensing Services Division*
    Superior Court, King County, 04-2-36048-0 SEA
- **Provisional v. regular ballot for voter who properly registered but was left off election rolls**
  - *Citizens Alliance for Secure Elections v. Michael Vu*
    U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
- **Voters who have moved and not updated their registration**
  - *Citizens Alliance for Secure Elections v. Michael Vu*
    U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
- **Provisional ballots cast by voters who claimed that someone else voted in their place and signed precinct record**
  - *Panio v. Sunderland,* 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)
- **Disclosure to a political party of provisional votes in danger of being rejected**
  - *Washington State Democratic Party v. King County Records, Elections & Licensing Services Division*
    Superior Court, King County, 04-2-36048-0 SEA
- **Provisional ballots incorrectly tabulated with regular ballots**
  - *Borders v. King County*
    Superior Court, Chelan County, No. 05-2-00027-3
- **Re-canvassing ballots previously rejected**
  - *McDonald, et al v. Secretary of State,* 103 P.3d 722 (Wash. 2004)
  - *Washington State Republican Party v. King County Division of Records,* 103 P.3d 725 (Wash. 2004)

Full Summaries:

Wrong Precinct

- *League of Latin American Citizens (LULAC) v. Arizona Secretary of State Jan Brewer*
    - ISSUE: wrong precinct
        - Lawsuit claims Arizona state policy to not count provisional ballots that were cast in the wrong precinct violates HAVA and the Equal Protection Clause of the 14th Amendment. Electionline.org – Litigation Summary (Feb. 14, 2005), http://www.electionline.org/Portals/1/Publications/litigation.update.Feb.14.05.pdf.
    - RESULT: N/A
    - RATIONALE: N/A
- ***Colorado Common Cause v. Donetta Davidson*, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)**
    - ISSUE: wrong precinct; absentee voters getting provisional ballots
        - Lawsuit challenges a state guideline that prohibits anyone voting in the wrong precinct from casting a ballot in any race but the presidential election based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at *1.
        - Challenges state guideline that provisional ballots will not be counted if the voter applied for an absentee ballot based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at *1.
    - RESULT: votes cast in the wrong precinct may only count for president and vice president; provisional votes cast by voters who applied for absentee ballots must be counted.
    - RATIONALE:
        - Court felt that Congress had no intent to eliminate precinct-based voting, a constitutional form of organizing voting; therefore, votes cast in the wrong precinct may not be counted for county-wide issues. 2004 WL 2360485, at *11. Court also felt that the legislative history behind HAVA's passage supported this notion. *Id.*
        - Court felt that requiring voters to vote in the correct precinct is not an unconstitutional infringement on the right to vote. 2004 WL 2360485, at *14. The impact of the requirement is further lessened by the fact that poll workers will direct the voter to the correct precinct. *Id.* In addition, the Court felt that there was a compelling interest in preventing voter fraud furthered by the precinct system. *Id.*
            - The Court left the door open to the possibility that state-wide voting may be possible after a state-wide computerized database is established in 2006. *Id.*
        - Court felt that not allowing voters who requested an absentee ballot to vote provisionally would conflict with the purpose of HAVA to ensure that registered and eligible voters are allowed to vote provisionally. 2004 WL 2360485, at *11, 12.

- ***AFL-CIO v. Hood,* 885 So. 2d 373 (Fla. 2004)**
  - ISSUE: wrong precinct
    - Lawsuit claimed that the precinct system was an unnecessary and unconstitutional infringement on the right to vote under the Florida and U.S. Constitutions. 885 So.2d at 374.
  - RESULT: votes cast in the wrong precinct may be rejected and not counted.
  - RATIONALE: Precinct based system is a regulation of the voting process not a qualification placed on the voter and could have been reasonably deemed necessary to protect the integrity of the voting process. 885 So.2d at 376.
- ***The Florida Democratic Party v. Hood,* 342 F. Supp. 2d 1073 (N.D. Fla. 2004)**
  - ISSUE: wrong precinct
    - Right to provisional ballot if in the wrong precinct (conceded by Florida prior to Order Granting Preliminary Injunction)
    - Right for vote to be counted if cast in the wrong precinct based on interpretation of HAVA language.
    - 342 F. Supp. 2d at 1074.
  - RESULT: voters in the wrong precinct are entitled to a provisional ballot, but are not entitled to have that vote counted if cast in the wrong precinct. 342 F. Supp. 2d at 1083.
  - RATIONALE:
    - Reading the statute to mean that a voter must be eligible at that polling place is consistent with HAVA's purpose, to allow voters to vote when they appear at the polling place, not to eliminate precinct voting. 342 F. Supp. 2d at 1079.
    - Reading is also consistent with votes being counted "in accordance with State law." 342 F. Supp. 2d at 1080.
    - Reading consistent with legislative history which says that poll workers should direct voters to the correct precinct not allow voters to vote at any polling site. 342 F. Supp. 2d at 1080.
    - "Eligible" in HAVA language means registered, 18 years of age, has lived in State for at least 30 days. 342 F. Supp. 2d at 1080.
    - HAVA intended to safeguard voter's right to vote but allow state law to determine whether that vote counts. 342 F. Supp. 2d at 1080.
    - Because election workers may make mistakes with on-the-spot determinations of the voter's polling place, a voter may not be denied a provisional ballot because an election official determined that he/she is at the wrong polling place. 342 F. Supp. 2d at 1081.
- ***Dean Brooks et al. v. Attorney General Tom Miller***
  - ISSUE: wrong precinct
    - Challenge Attorney General decision that votes cast in the correct county but wrong precinct should be counted for Congress and President and Vice President only. Electionline.org – Litigation Summary (Feb. 14, 2005), http://www.electionline.org/Portals/1/Publications/litigation.update.Feb.14.05.pdf.

  - RESULT: N/A
  - RATIONALE: N/A
- ***Bay County Democratic Party, et al v. Land et al,* 347 F. Supp. 2d 404 (E.D. Mich. 2004)**
  - ISSUE: wrong precinct; identification requirement for ballot to count
    - Lawsuit challenges Secretary of State's directive that votes cast in the wrong precinct but correct township, city, or village should not be counted based on HAVA. 347 F. Supp. 2d at 427-34.
    - Lawsuit challenges Secretary of State's directive that first time voters should be required to provided identification within six days of election day in order for their votes to count under HAVA, the Fourteenth Amendment to the Constitution, Michigan election law, and the Equal Protection Clause of the Michigan Constitution. 347 F. Supp. 2d at 434-35.
  - RESULT [but later overruled by Sixth Circuit]: votes cast in the wrong precinct but correct city, village, or township should be counted; identification may be required of provisional voters after the election in order for their votes to count. 347 F. Supp. 2d at 438.
  - RATIONALE:
    - With regard to the wrong precinct issue, the Court relies on the District Court decision in *Sandusky County Democratic Party v. Blackwell,* 339 F. Supp. 2d 975, 992-93 (N.D. Ohio 2004). *Bay County*, 347 F. Supp. 2d at 431-32.
    - The Court also relies on the "plain language" of HAVA – votes are to be counted in accordance with state law (dictates the *procedure* of counting); whether or not votes are counted is decided under HAVA; votes under HAVA are counted if the voter is "eligible" to vote. 347 F. Supp. 2d at 431-32.
    - With regard to the identification requirement, the Court found that the requirement was reasonable; that preventing voter fraud is a compelling interest; and that the requirement is applied uniformly and in a nondiscriminatory manner. 347 F. Supp. 2d at 435.
  - **OVERRULED**: 6th Circuit ruled that votes in the wrong precinct should not be counted and interpreted "jurisdiction," "eligible," and the HAVA provision concerning provisional ballots differently. *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004).
- ***Claude Hawkins, Brian Morahan, Susan Schilling and the Missouri Democratic Party v. Matt Blunt***
  U.S. District Court Western District of Missouri, Case No. 2:04-cv-04177
  - ISSUE: wrong precinct
    - Plaintiffs claim that not counting provisional votes cast in the wrong precinct is in violation of HAVA (preemption argument). Order denying Plaintiffs' Motion for Summary Judgment, granting Defendants' Motion for Summary Judgment 3.
      - But the Secretary of State later decided to count those provisional ballots in which the voter was not directed to the

correct polling place, so this issue was considered moot. Order 11.

    - Plaintiffs also disputed a provision of Missouri law which states that a voter should be directed to the correct polling place in lieu of receiving a provisional ballot. Order 10, 12. The provision has been interpreted to mean that if a voter refuses to go to the correct polling place, he shall be given a provisional ballot, which will not be counted (allege it is inconsistent with HAVA - preemption). Order 10, 12.
        - Allege that the Missouri law implementing HAVA "frustrates the intent" of HAVA. Order 13.
    - Plaintiffs also allege that the Missouri law violates the Equal Protection Clause because the decision not to count ballots cast at an incorrect polling place is arbitrary. Order 21.
  - RESULT: Provisional ballots cast in the wrong precinct should be thrown out provided that the voter was directed to correct precinct. Order.
  - RATIONALE:
    - HAVA was intended to be flexible in the way in which states could implement it, evidenced by use of the phrase "eligible under state law to vote." Order 14.
        - This reference to state law gives states the power to define voter qualifications for provisional ballots including where they can be cast in order to be counted. *Id.*
    - Court relies on statements of Sen. Bond and other HAVA supporters, stating that they did not intend to overturn State law regarding the jurisdiction in which a ballot must be cast and that poll workers should direct the voter to the correct polling place in the event of confusion. Order 15-16.
    - The laws do not violate the Equal Protection Clause because the goals and objectives of the precinct system are legitimate, and it guarantees those eligible to vote may do so. Order 22. The system is rationally related to ensuring a fair election. *Id.*
- ***Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)**
  - ISSUES: wrong precinct; voters who voted provisionally because other voters had signed poll ledger in their place; provisional ballots in which the envelope did not identify the election district of the voter
    - Claims all based on N.Y. election law – once case got to Supreme Court, no claims based on Constitution or HAVA.
  - RESULT:
    - Provisional votes in which the voter was in the correct polling place, but wrong district should be counted; voters in the wrong polling place and wrong district should not be counted. 4 N.Y. 3d at 128.
    - Provisional ballots cast by voters who claimed that another voter voted in his/her place and signed the precinct ledger should not be counted. 4 N.Y. 3d at 129.

    - Provisional ballots in which the election district was not identified on the envelope should be counted. 4 N.Y. 3d at 129.
  - RATIONALE: provisional ballots should be counted if the ballots were in dispute only as a result of ministerial errors by the election board. 4 N.Y. 3d at 129.
    - Ballots cast in the correct polling place but wrong district were counted because they were assumed to be the result of ministerial error; the election officers should have directed the voter to the correct voting table. 4 N.Y. 3d at 128. Ballots cast in the wrong polling place and district were not counted because it would be unreasonable to require poll workers to ensure that voters are at the correct polling site. *Id.*
    - Provisional votes cast by voters who claimed another voter had voted in their place earlier were not counted because of the possibility of fraud. 4 N.Y. 3d at 129.
    - Provisional ballots lacking the election district on the envelope were counted because they were cast in the correct election district, and mishandling by election officials caused the ballots to become unidentifiable with a district (election officials placed post-it notes on the ballots containing the missing information, but the notes later fell off). 4 N.Y. 3d at 129.
  - DISPOSITION: application for rehearing denied – 2/7/05
- ***James v. Bartlet*, 607 S.E. 2d 638, 359 N.C. 260 (N.C. 2005)**
  - ISSUE: wrong precinct
    - Whether or not ballots cast outside the voter's home precinct should be counted as long as the voter casts a ballot for races in his home precinct. 607 S.E. 2d at 640.
  - RESULT: NC state law requires voters to vote in the correct precinct; therefore, votes cast in the wrong precinct were not counted for state and local elections (did not discuss federal elections). 607 S.E. 2d at 645.
  - RATIONALE:
    - Plain language of state statute requires that the voter be a resident of the precinct he votes in and registers in (refers to "the precinct" versus "a precinct"). 607 S.E. 2d at 642.
    - No intent to enable voters to vote outside their precincts by Congress or state legislature in enacting provisional ballot statutes. 607 S.E. 2d at 643.
    - Administrative Code sets out precise circumstances under which a voter may vote a provisional ballot and specifies that the voter must reside in the precinct. 607 S.E. 2d at 643.
    - Court may not remedy Election Board's decision to give provisional ballots to voters in a manner not authorized by State law. 607 S.E. 2d at 644.
    - Advantages of the precinct system: caps number of voters at one polling place; allows there to be one uniform ballot for all voters at that polling place; ballots may list only those elections a voter may

vote for (less confusing); easier to monitor fraud; and it puts polling places closer to people's homes. 607 S.E. 2d at 644-45.

- ***The League of Women Voters of Ohio et al v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004)**
    - ISSUES: wrong precinct & identification requirement for ballot to count
        - Wrong precinct issue. 340 F. Supp. 2d at 824.
        - Whether identification provided on election day should be required of provisional voters (voting provisionally because of ID requirement) in order for ballot to count. 340 F. Supp. 2d at 828.
            - Claim that it will cause provisional ballots voted by voters without identification (who cannot remember their numerical identifier, do not have a numerical identifier, or cannot return to the polls prior to closing) to be rejected.
                - Fourteenth Amendment fundamental rights claim.
                - Claim under HAVA based on interpretation of the "eligible" language.
    - RESULT:
        - Wrong precinct issue decided already in *Sandusky County Democratic Party,* and even though it was on appeal at the time of the decision, the Judge decided that the relief granted (or not) from that case would be sufficient to serve the interests of these plaintiffs as well (he did not reach a decision on the issue). 340 F. Supp. 2d at 824.
        - Identification or oral recitation of identification number (DL or SS) may be required before the polls close in order for a provisional ballot to count. 340 F. Supp. 2d at 831.
    - RATIONALE:
        - Identification may be required to preserve the integrity of elections and prevent voter fraud, which outweighs the interest in ensuring that every ballot count. 340 F. Supp. 2d at 829. Further, there is no less burdensome way to detect and prevent election fraud. *Id.*
        - Identification may be required because HAVA allows it; the requirement affects a small number of voters (registered by mail, voting for the first time, have no identification, cannot recite a numerical identifier); it is easy to obtain the identification information (telephone, quick return home); and notice is given of the requirement on the registration form. 340 F. Supp. 2d at 830.
        - Identification may be required because HAVA's language about "eligible under State law to vote" only means that the name on the registration form is eligible to vote. 340 F. Supp. 2d at 831. A voter must still prove that he/she is the same person as the person on the registration form, who is "eligible" to vote under State law, and proving identity is a reasonable burden. *Id.*

- ***Sandusky County Democratic Party v. Blackwell*, 339 F. Supp. 2d 975 (N.D. Ohio 2004)** – Order in District Court case, 10/14/04
  ***Sandusky County Democratic Party v. Blackwell*, 340 F. Supp. 2d 815 (N.D. Ohio 2004)** – Order in District Court case, 10/20/04
  ***Sandusky County Democratic Party v. Blackwell*, 386 F.3d 815 (6th Cir. 2004).** – Order in Sixth Circuit case, 10/23/04
  ***Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004)** – Opinion in Sixth Circuit case, 10/23/04
  ***Sandusky County Democratic Party v. Blackwell*, 361 F. Supp. 2d 688 (6th Cir. 2005)** – Opinion in District Court in Plaintiff's request for attorney's fees, which was granted, 3/3/05
  - ISSUE: wrong precinct
    - Plaintiffs claim that a Directive by the Secretary of State denies provisional ballots to voters inadvertently purged from voter lists or to those who go to the wrong precinct and only allows provisional ballots to voters who have moved and not updated their registration. Complaint 2-3.
      - Claim that this violates the purpose of HAVA – to ensure that all electors are eligible to vote provisionally. 339 F. Supp. 2d 975.
      - Claim that "jurisdiction" means the same as the geographic unit which maintains voter registration rolls and the same as its meaning in the NVRA. 387 F.3d at 574-75.
    - Statutory claim that HAVA provides an absolute right to cast a provisional ballot which counts provided that the voter is registered and eligible. Complaint 6-7.
      - Provisional ballots should be given to every voter who attempts to vote in the correct county but not necessarily the correct precinct. Complaint 10-11.
    - Claim that a voter (who has moved) who goes to one polling place attempting to vote and then goes to the other later should be allowed a provisional ballot. Complaint 12, 14.
  - RESULT: Votes cast in the wrong precinct may not be counted by a state, but voters must be permitted to cast them. 386 F.3d at 816. HAVA secures the right to cast a provisional ballot; the legality of the ballot must be determined under state law. 386 F.3d at 576.
  - RATIONALE:
    - Precinct system rooted in tradition; no indication Congress wished to completely overhaul the voting system of most states. 387 F.3d at 568; 387 F.3d at 576.
    - Advantages of precinct system: caps the number of voters at one place; allows ballot for all voters at one precinct to be the same for all elections; ballot lists only elections the voter may vote for (less confusing); easier to monitor and prevent fraud; and puts polling places closer to voter's homes. 387 F.3d at 569.

    - Court believes that the totality of the legislative history supports the notion that jurisdiction equals precinct, and votes cast outside the voter's precinct should not be counted under HAVA. 387 F.3d at 575.
    - The District Court's broad reading of "eligible under state law to vote" leads to the conclusion that a voter could vote multiple times in one election, and all of the provisional ballots would count if state law is not used to determine eligibility (since it is Ohio not federal law that specifies that a voter can vote only once).
    - Court relies on the presumption that Congress must be clear in order to alter the state-federal balance; thus, Congress would have been more clear if it intended to eliminate state control over polling location. 387 F.3d at 578.
    - But a provisional ballot must be provided to a voter, as HAVA's purpose was to prevent on-the-spot denials of ballots to voters determined ineligible by precinct workers. 387 F.3d at 574.
        - Court believes that HAVA's provisional voting was designed to compensate for the impossibility of having election officials with "perfect knowledge." 387 F.3d at 570. Under this rationale, provisional voting is used when a voter's eligibility in that precinct cannot be verified, but the voter insists that he/she is eligible because it is possible that the election officials do not have perfect information. *Id.*
- ***State of Ohio ex rel. Mackey et al v. Blackwell et al*, No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)**
  - ISSUES: equal protection issue & wrong precinct issue & how verification (against registration records) procedure should be conducted
    - Equal protection issue from different treatment on whether a voter should have a provisional ballot and different treatment on whether a provisional vote should be counted.
        - Claim that there were inconsistent standards for determining whether or not a voter received a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2.
        - Claim that there were inconsistent standards for determining whether or not to count a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2, 9.
    - Claim that votes cast in the wrong precinct should be counted given that many voters did not receive assistance to correct precinct, as required by Secretary of State's directive. Original Action in Mandamus 3, 16-17.
    - Claim that provisional ballots lacking a signature, HAVA sticker, or other required information on the envelope were wrongfully rejected – allege that these are nonmaterial errors in violation of VRA. Original Action in Mandamus 6-7, 11, 14.

        - Claim that provisional ballots should be verified by hand against registration records rather than only against computerized records. Original Action in Mandamus 12-13.
            - Allege that database was incomplete – some registration forms were not indexed and accessible to poll workers. *Id.*
            - Allege that registration forms were erroneously processed. *Id.*
    - RESULT: Dismissed for failure to state a claim upon which relief can be granted. 2004 WL 2973976, at *2.

<u>**Absentee voters who did not receive a ballot who wish to vote provisionally**</u>

- ***Colorado Common Cause v. Donetta Davidson*, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)**
    - ISSUE: wrong precinct; absentee voters getting provisional ballots.
        - Lawsuit challenges a state guideline that prohibits anyone voting in the wrong precinct from casting a ballot in any race but the presidential election based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at *1.
        - Challenges state guideline that provisional ballots will not be counted if the voter applied for an absentee ballot based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at *1.
    - RESULT: votes cast in the wrong precinct may only count for president and vice president; provisional votes cast by voters who applied for absentee ballots must be counted.
    - RATIONALE:
        - Court felt that Congress had no intent to eliminate precinct-based voting, a constitutional form of organizing voting; therefore, votes cast in the wrong precinct may not be counted for county-wide issues. 2004 WL 2360485, at *11. Court also felt that the legislative history behind HAVA's passage supported this notion. *Id.*
        - Court felt that requiring voters to vote in the correct precinct is not an unconstitutional infringement on the right to vote. 2004 WL 2360485, at *14. The impact of the requirement is further lessened by the fact that poll workers will direct the voter to the correct precinct. *Id.* In addition, the Court felt that there was a compelling interest in preventing voter fraud furthered by the precinct system. *Id.*
            - The Court left the door open to the possibility that state-wide voting may be possible after a state-wide computerized database is established in 2006. *Id.*
        - Court felt that not allowing voters who requested an absentee ballot to vote provisionally would conflict with the purpose of HAVA to ensure that registered and eligible voters are allowed to vote provisionally. 2004 WL 2360485, at *11, 12.
- ***White v. Blackwell, et al.***
  U.S. District Court for the Northern District of Ohio, Case No. 3:04CV 7689
    - ISSUE: absentee voters getting provisional ballots

        - Absentee voters who failed to receive absentee ballots in the mail who wish to vote provisionally at the polls under HAVA.
            - Claim under HAVA that the Secretary of State and Board of Elections interpreted HAVA incorrectly. Complaint 8.
    - RESULT: Anyone who shows up to the polls and asserts eligibility to vote shall be permitted to cast a provisional ballot, including those who previously requested an absentee ballot. Memorandum Opinion and Order 3-4.
    - RATIONALE: HAVA, as interpreted in *Sandusky County Democratic Party*, is clear, anyone who asserts eligibility to vote is able to receive a provisional ballot under HAVA. Memorandum Opinion 3-4.

Equal protection – inconsistent treatment or distribution of provisional ballots

- ***Schering v. Blackwell***
  U.S. District Court for the Southern District of Ohio, Case No. 1:04-cv-755.
    - ISSUE: equal protection issue
        - Plaintiffs allege that the process for evaluating provisional ballots in Ohio violates the Equal Protection Clause; want uniform standards for evaluating provisional ballots
    - RESULT: Plaintiffs filed a stipulated dismissal. 3/15/05
    - Case never reached opinion.
- ***State of Ohio ex rel. Mackey et al v. Blackwell et al*, No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)**
    - ISSUES: equal protection issue & wrong precinct issue & how verification (against registration records) procedure should be conducted
        - Equal protection issue from different treatment on whether a voter should have a provisional ballot and different treatment on whether a provisional vote should be counted.
            - Claim that there were inconsistent standards for determining whether or not a voter received a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2.
            - Claim that there were inconsistent standards for determining whether or not to count a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2, 9.
        - Claim that votes cast in the wrong precinct should be counted given that many voters did not receive assistance to correct precinct, as required by Secretary of State's directive. Original Action in Mandamus 3, 16-17.
        - Claim that provisional ballots lacking a signature, HAVA sticker, or other required information on the envelope were wrongfully rejected – allege that these are nonmaterial errors in violation of VRA. Original Action in Mandamus 6-7, 11, 14.
        - Claim that provisional ballots should be verified by hand against registration records rather than only against computerized records. Original Action in Mandamus 12-13.

            - Allege that database was incomplete – some registration forms were not indexed and accessible to poll workers. *Id.*
            - Allege that registration forms were erroneously processed. *Id.*
    - RESULT: Dismissed for failure to state a claim upon which relief can be granted. 2004 WL 2973976, at *2.

Provisional ballots which were incomplete in some way (not signed, do not display election district, etc.)

- ***Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)**
    - ISSUES: wrong precinct; voters who voted provisionally because other voters had signed poll ledger in their place; provisional ballots in which the envelope did not identify the election district of the voter
        - Claims all based on N.Y. election law – once case got to Supreme Court, no claims based on Constitution or HAVA.
    - RESULT:
        - Provisional votes in which the voter was in the correct polling place, but wrong district should be counted; voters in the wrong polling place and wrong district should not be counted. 4 N.Y. 3d at 128.
        - Provisional ballots cast by voters who claimed that another voter voted in his/her place and signed the precinct ledger should not be counted. 4 N.Y. 3d at 129.
        - Provisional ballots in which the election district was not identified on the envelope should be counted. 4 N.Y. 3d at 129.
    - RATIONALE: provisional ballots should be counted if the ballots were in dispute only as a result of ministerial errors by the election board. 4 N.Y. 3d at 129.
        - Ballots cast in the correct polling place but wrong district were counted because they were assumed to be the result of ministerial error; the election officers should have directed the voter to the correct voting table. 4 N.Y. 3d at 128. Ballots cast in the wrong polling place and district were not counted because it would be unreasonable to require poll workers to ensure that voters are at the correct polling site. *Id.*
        - Provisional votes cast by voters who claimed another voter had voted in their place earlier were not counted because of the possibility of fraud. 4 N.Y. 3d at 129.
        - Provisional ballots lacking the election district on the envelope were counted because they were cast in the correct election district, and mishandling by election officials caused the ballots to become unidentifiable with a district (election officials placed post-it notes on the ballots containing the missing information, but the notes later fell off). 4 N.Y. 3d at 129.
    - DISPOSITION: application for rehearing denied – 2/7/05

- ***Borders v. King County***
  Superior Court, Chelan County, No. 05-2-00027-3 [election contest filed 1/7/05 contesting the certification of the results of the election, decision 6/6/05]
  - ISSUES: provisional ballots incorrectly tabulated with regular ballots before being verified; verification for provisional ballots; provisional ballots without labels. Court's Oral Decision 6/6.
    - Provisional ballots cast directly into electronic voting machine or ballot tabulated before it was verified. Court's Oral Decision 6/6.
    - No signature or registration verification conducted for certain provisional ballots. Court's Oral Decision 6/6.
  - RESULT: election not overturned – even though illegal votes cast – no proof who they were cast for or whether the voter voted in the particular race at all. Court's Oral Decision 6/6.
  - RATIONALE:
    - Cannot prove whether a voter voted for a particular race; do not know which ballots were illegal. Court's Oral Decision 6/6.
    - No evidence of actual ballot stuffing. Court's Oral Decision 6/6.
    - Reconciliation issues and irregularities are common in elections. Court's Oral Decision 6/6.
    - No evidence the irregularities were intentional. Court's Oral Decision 6/6.
    - Probability techniques (proportional deduction) used to predict who an illegal voter voted for are not generally accepted scientific techniques. Court's Oral Decision 6/6.
    - Judicial restraint from interfering with elections. Court's Oral Decision 6/6.
    - Precedent – challenge under a WA statute, which previously had been interpreted to require direct or indirect wrongdoing by someone intending for the irregularity to help one candidate. Court's Oral Decision 6/6.

Requirement for provisional ballot to be counted – ID required

- ***Bay County Democratic Party, et al v. Land et al*, 347 F. Supp. 2d 404 (E.D. Mich. 2004)**
  - ISSUE: wrong precinct; identification requirement for ballot to count
    - Lawsuit challenges Secretary of State's directive that votes cast in the wrong precinct but correct township, city, or village should not be counted based on HAVA. 347 F. Supp. 2d at 427-34.
    - Lawsuit challenges Secretary of State's directive that first time voters should be required to provided identification within six days of election day in order for their votes to count under HAVA, the Fourteenth Amendment to the Constitution, Michigan election law, and the Equal Protection Clause of the Michigan Constitution. 347 F. Supp. 2d at 434-35.
  - RESULT [but later overruled by Sixth Circuit]: votes cast in the wrong precinct but correct city, village, or township should be counted;

identification may be required of provisional voters after the election in order for their votes to count. 347 F. Supp. 2d at 438.

  - RATIONALE:
    - With regard to the wrong precinct issue, the Court relies on the District Court decision in *Sandusky County Democratic Party v. Blackwell,* 339 F. Supp. 2d 975, 992-93 (N.D. Ohio 2004). *Bay County*, 347 F. Supp. 2d at 431-32.
    - The Court also relies on the "plain language" of HAVA – votes are to be counted in accordance with state law (dictates the *procedure* of counting); whether or not votes are counted is decided under HAVA; votes under HAVA are counted if the voter is "eligible" to vote. 347 F. Supp. 2d at 431-32.
    - With regard to the identification requirement, the Court found that the requirement was reasonable; that preventing voter fraud is a compelling interest; and that the requirement is applied uniformly and in a nondiscriminatory manner. 347 F. Supp. 2d at 435.
  - **<u>OVERRULED</u>**: 6th Circuit ruled that votes in the wrong precinct should not be counted and interpreted "jurisdiction," "eligible," and the HAVA provision concerning provisional ballots differently. *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004).

- ***The League of Women Voters of Ohio et al v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004)**
  - ISSUES: wrong precinct & identification requirement for ballot to count
    - Wrong precinct issue. 340 F. Supp. 2d at 824.
    - Whether identification provided on election day should be required of provisional voters (voting provisionally because of ID requirement) in order for ballot to count. 340 F. Supp. 2d at 828.
      - Claim that it will cause provisional ballots voted by voters without identification (who cannot remember their numerical identifier, do not have a numerical identifier, or cannot return to the polls prior to closing) to be rejected.
        - Fourteenth Amendment fundamental rights claim.
        - Claim under HAVA based on interpretation of the "eligible" language.
  - RESULT:
    - Wrong precinct issue decided already in *Sandusky County Democratic Party,* and even though it was on appeal at the time of the decision, the Judge decided that the relief granted (or not) from that case would be sufficient to serve the interests of these plaintiffs as well (he did not reach a decision on the issue). 340 F. Supp. 2d at 824.
    - Identification or oral recitation of identification number (DL or SS) may be required before the polls close in order for a provisional ballot to count. 340 F. Supp. 2d at 831.

    - RATIONALE:
        - Identification may be required to preserve the integrity of elections and prevent voter fraud, which outweighs the interest in ensuring that every ballot count. 340 F. Supp. 2d at 829. Further, there is no less burdensome way to detect and prevent election fraud. *Id.*
        - Identification may be required because HAVA allows it; the requirement affects a small number of voters (registered by mail, voting for the first time, have no identification, cannot recite a numerical identifier); it is easy to obtain the identification information (telephone, quick return home); and notice is given of the requirement on the registration form. 340 F. Supp. 2d at 830.
        - Identification may be required because HAVA's language about "eligible under State law to vote" only means that the name on the registration form is eligible to vote. 340 F. Supp. 2d at 831. A voter must still prove that he/she is the same person as the person on the registration form, who is "eligible" to vote under State law, and proving identity is a reasonable burden. *Id.*

Verification procedure for provisional ballots

- ***State of Ohio ex rel. Mackey et al v. Blackwell et al,* No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)**
    - ISSUES: equal protection issue & wrong precinct issue & how verification (against registration records) procedure should be conducted
        - Equal protection issue from different treatment on whether a voter should have a provisional ballot and different treatment on whether a provisional vote should be counted.
            - Claim that there were inconsistent standards for determining whether or not a voter received a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2.
            - Claim that there were inconsistent standards for determining whether or not to count a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2, 9.
        - Claim that votes cast in the wrong precinct should be counted given that many voters did not receive assistance to correct precinct, as required by Secretary of State's directive. Original Action in Mandamus 3, 16-17.
        - Claim that provisional ballots lacking a signature, HAVA sticker, or other required information on the envelope were wrongfully rejected – allege that these are nonmaterial errors in violation of VRA. Original Action in Mandamus 6-7, 11, 14.
        - Claim that provisional ballots should be verified by hand against registration records rather than only against computerized records. Original Action in Mandamus 12-13.
            - Allege that database was incomplete – some registration forms were not indexed and accessible to poll workers. *Id.*
            - Allege that registration forms were erroneously processed. *Id.*

  - RESULT: Dismissed for failure to state a claim upon which relief can be granted. 2004 WL 2973976, at *2.
- ***Borders v. King County***
  Superior Court, Chelan County, No. 05-2-00027-3 [election contest filed 1/7/05 contesting the certification of the results of the election, decision 6/6/05]
  - ISSUES: provisional ballots incorrectly tabulated with regular ballots before being verified; verification for provisional ballots; provisional ballots without labels. Court's Oral Decision 6/6.
    - Provisional ballots cast directly into electronic voting machine or ballot tabulated before it was verified. Court's Oral Decision 6/6.
    - No signature or registration verification conducted for certain provisional ballots. Court's Oral Decision 6/6.
  - RESULT: election not overturned – even though illegal votes cast – no proof who they were cast for or whether the voter voted in the particular race at all. Court's Oral Decision 6/6.
  - RATIONALE:
    - Cannot prove whether a voter voted for a particular race; do not know which ballots were illegal. Court's Oral Decision 6/6.
    - No evidence of actual ballot stuffing. Court's Oral Decision 6/6.
    - Reconciliation issues and irregularities are common in elections. Court's Oral Decision 6/6.
    - No evidence the irregularities were intentional. Court's Oral Decision 6/6.
    - Probability techniques (proportional deduction) used to predict who an illegal voter voted for are not generally accepted scientific techniques. Court's Oral Decision 6/6.
    - Judicial restraint from interfering with elections. Court's Oral Decision 6/6.
    - Precedent – challenge under a WA statute, which previously had been interpreted to require direct or indirect wrongdoing by someone intending for the irregularity to help one candidate. Court's Oral Decision 6/6.
- ***McDonald, et al v. Secretary of State,* 103 P.3d 722 (Wash. 2004)** [First Supreme Court review 12/14/04]
  - ISSUE: signature comparison; request for recanvassing of previously rejected ballots
    - Equal Protection Clause claim based on a disparity between signature-checking standards. 153 P.3d at 724.
    - Procedure for comparing signatures used in first canvass did not comport with Washington's statutory and regulatory scheme. 153 P.3d at 724.
  - RESULT: signature verification procedure in first canvass ok; no equal protection violation based on disparity between rejected provisional ballots; ballots may only be retabulated if they were counted or tallied in the previous count.

- RATIONALE:
  - Signature verification procedure used in first canvass was sufficient, as voters were permitted to correct or update signatures until the day prior to the canvass (Nov. 16). 153 P.3d at 724.
  - No equal protection violation, as the petitioners only established a disparity in ballots rejected, not actual disparity in procedures. Also because they did not allege any particular procedure was faulty. 153 P.3d at 724.

- ***Washington State Democratic Party v. King County Records, Elections & Licensing Services Division***
  Superior Court, King County, 04-2-36048-0 SEA [Decision 11/16/04]
  - ISSUE: verifying ballots/disclosure of voters in risk of rejection for signature problems
    - King County elections officials ordered to give the State Democratic Party the names of 929 voters whose provisional ballots may be discarded because of signature problems. Memorandum Opinion 2.
      - Challenge under Public Disclosure Act. Memorandum Opinion 2-3.
        - County argued that HAVA prevented disclosure. *Id.*
      - Challenge under Equal Protection Clause. Memorandum Opinion 4.
    - Republican Party intervened and wanted provisional votes submitted by third parties (such as the Democratic Party) to be rejected, requiring voters to come down to the county board to verify their questioned signature. Memorandum Opinion 5.
  - RESULT: Democrats were entitled to disclosure of the names so that the voters could be contacted to verify their ballots; equal protection claim dismissed. Votes brought in by third parties should be counted.
  - RATIONALE:
    - Identity of voter or disposition of provisional ballots, but not votes cast, are subject to Public Disclosure Act. Memorandum Opinion 4.
    - Disclosure of voters' names leads to greater notice, which is the goal. Memorandum Opinion 4.
    - Equal protection claim – dispute is premature, and the evidence is hypothetical. Memorandum Opinion 4.
    - There is no evidence of fraud, no showing that King County is acting illegally, best protection against fraud is public disclosure, so Republicans' claim is dismissed. Memorandum Opinion 6.

<u>Provisional v. regular ballot for voter who properly registered but was left off election rolls</u>

- ***Citizens Alliance for Secure Elections v. Michael Vu***
  U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
  - ISSUE: whether voters who have moved but not updated their registration should receive a provisional ballot or a regular ballot; whether voters inadvertently left off registration rolls should receive a regular or provisional ballot.

        - Plaintiffs claim that voters who have moved within the state but not updated their registration should not have to vote a provisional ballot at their new voting location but should instead vote a regular ballot. (Challenge guideline as in conflict with Ohio statute). Order Denying Plaintiffs' Motion for Temporary Restraining Order 2.
        - Claim that Board of Elections violated the NVRA when they failed to properly process voter registration applications and properly notify applicants of the status of their incomplete (yet timely) applications. Motion for a Temporary Restraining Order, Memorandum in Support 2-3.
            - Allege clerical errors were made in transcribing registration cards to computer records, which resulted in applications being considered incomplete (and thus, will force those voters to vote a provisional ballot rather than a regular ballot).
            - Allege that Board neglected to register voters whose applications were timely submitted.
        - Claim that the Board of Elections actions concerning these "incomplete" and lost registrations disenfranchise voters in violation of the Voting Rights Act. Motion Memorandum in Support 7.
    - RESULT: Provisional ballot procedure is sufficient to allow voters who were inadvertently removed from the registration list or should be on the registration list an opportunity to vote – so voters who have moved or were erroneously left off the list are permitted to vote provisionally.
    - RATIONALE: Provisional voting system seems reasonably calculated to remedy any situation in which a voter was left off the registered voter lists. Order 4.
    - Plaintiffs dismissed their case without prejudice after their request for a temporary restraining order was rejected. Plaintiff's Notice Of Voluntary Dismissal Without Prejudice.

Voters who have moved and not updated their registration

- ***Citizens Alliance for Secure Elections v. Michael Vu***
  U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
    - ISSUE: whether voters who have moved but not updated their registration should receive a provisional ballot or a regular ballot; whether voters inadvertently left off registration rolls should receive a regular or provisional ballot.

        - Plaintiffs claim that voters who have moved within the state but not updated their registration should not have to vote a provisional ballot at their new voting location but should instead vote a regular ballot. (Challenge guideline as in conflict with Ohio statute). Order Denying Plaintiffs' Motion for Temporary Restraining Order 2.
        - Claim that Board of Elections violated the NVRA when they failed to properly process voter registration applications and properly notify applicants of the status of their incomplete (yet timely) applications. Motion for a Temporary Restraining Order, Memorandum in Support 2-3.

        - Allege clerical errors were made in transcribing registration cards to computer records, which resulted in applications being considered incomplete (and thus, will force those voters to vote a provisional ballot rather than a regular ballot).
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  - RESULT: Provisional ballot procedure is sufficient to allow voters who were inadvertently removed from the registration list or should be on the registration list an opportunity to vote – so voters who have moved or were erroneously left off the list are permitted to vote provisionally.
  - RATIONALE: Provisional voting system seems reasonably calculated to remedy any situation in which a voter was left off the registered voter lists. Order 4.
  - Plaintiffs dismissed their case without prejudice after their request for a temporary restraining order was rejected. Plaintiff's Notice Of Voluntary Dismissal Without Prejudice.

<u>Provisional ballots cast by voters who claimed that someone else voted in their place and signed precinct record</u>

- ***Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)**
  - ISSUES: wrong precinct; voters who voted provisionally because other voters had signed poll ledger in their place; provisional ballots in which the envelope did not identify the election district of the voter
    - Claims all based on N.Y. election law – once case got to Supreme Court, no claims based on Constitution or HAVA.
  - RESULT:
    - Provisional votes in which the voter was in the correct polling place, but wrong district should be counted; voters in the wrong polling place and wrong district should not be counted. 4 N.Y. 3d at 128.
    - Provisional ballots cast by voters who claimed that another voter voted in his/her place and signed the precinct ledger should not be counted. 4 N.Y. 3d at 129.
    - Provisional ballots in which the election district was not identified on the envelope should be counted. 4 N.Y. 3d at 129.
  - RATIONALE: provisional ballots should be counted if the ballots were in dispute only as a result of ministerial errors by the election board. 4 N.Y. 3d at 129.
    - Ballots cast in the correct polling place but wrong district were counted because they were assumed to be the result of ministerial error; the election officers should have directed the voter to the correct voting table. 4 N.Y. 3d at 128. Ballots cast in the wrong polling place and district were not counted because it would be unreasonable to require poll workers to ensure that voters are at the correct polling site. *Id.*

        - Provisional votes cast by voters who claimed another voter had voted in their place earlier were not counted because of the possibility of fraud. 4 N.Y. 3d at 129.
        - Provisional ballots lacking the election district on the envelope were counted because they were cast in the correct election district, and mishandling by election officials caused the ballots to become unidentifiable with a district (election officials placed post-it notes on the ballots containing the missing information, but the notes later fell off). 4 N.Y. 3d at 129.
    - DISPOSITION: application for rehearing denied – 2/7/05

Disclosure to a political party of provisional votes in danger of being rejected

- ***Washington State Democratic Party v. King County Records, Elections & Licensing Services Division***
  Superior Court, King County, 04-2-36048-0SEA [Decision 11/16/04]
    - ISSUE: verifying ballots/disclosure of voters in risk of rejection for signature problems
        - King County elections officials ordered to give the State Democratic Party the names of 929 voters whose provisional ballots may be discarded because of signature problems. Memorandum Opinion 2.
            - Challenge under Public Disclosure Act. Memorandum Opinion 2-3.
                - County argued that HAVA prevented disclosure. *Id.*
            - Challenge under Equal Protection Clause. Memorandum Opinion 4.
        - Republican Party intervened and wanted provisional votes submitted by third parties (such as the Democratic Party) to be rejected, requiring voters to come down to the county board to verify their questioned signature. Memorandum Opinion 5.
    - RESULT: Democrats were entitled to disclosure of the names so that the voters could be contacted to verify their ballots; equal protection claim dismissed. Votes brought in by third parties should be counted.
    - RATIONALE:
        - Identity of voter or disposition of provisional ballots, but not votes cast, are subject to Public Disclosure Act. Memorandum Opinion 4.
        - Disclosure of voters' names leads to greater notice, which is the goal. Memorandum Opinion 4.
        - Equal protection claim – dispute is premature, and the evidence is hypothetical. Memorandum Opinion 4.
        - There is no evidence of fraud, no showing that King County is acting illegally, best protection against fraud is public disclosure, so Republicans' claim is dismissed. Memorandum Opinion 6.

Provisional ballots incorrectly tabulated with regular ballots

- ***Borders v. King County***
  Superior Court, Chelan County, No. 05-2-00027-3 [election contest filed 1/7/05 contesting the certification of the results of the election, decision 6/6/05]
    - ISSUES: provisional ballots incorrectly tabulated with regular ballots before being verified; verification for provisional ballots; provisional ballots without labels. Court's Oral Decision 6/6.
        - Provisional ballots cast directly into electronic voting machine or ballot tabulated before it was verified. Court's Oral Decision 6/6.
        - No signature or registration verification conducted for certain provisional ballots. Court's Oral Decision 6/6.
    - RESULT: election not overturned – even though illegal votes cast – no proof who they were cast for or whether the voter voted in the particular race at all. Court's Oral Decision 6/6.
    - RATIONALE:
        - Cannot prove whether a voter voted for a particular race; do not know which ballots were illegal. Court's Oral Decision 6/6.
        - No evidence of actual ballot stuffing. Court's Oral Decision 6/6.
        - Reconciliation issues and irregularities are common in elections. Court's Oral Decision 6/6.
        - No evidence the irregularities were intentional. Court's Oral Decision 6/6.
        - Probability techniques (proportional deduction) used to predict who an illegal voter voted for are not generally accepted scientific techniques. Court's Oral Decision 6/6.
        - Judicial restraint from interfering with elections. Court's Oral Decision 6/6.
        - Precedent – challenge under a WA statute, which previously had been interpreted to require direct or indirect wrongdoing by someone intending for the irregularity to help one candidate. Court's Oral Decision 6/6.

Re-canvassing ballots previously rejected

- ***McDonald, et al v. Secretary of State,* 103 P.3d 722 (Wash. 2004)** [First Supreme Court review 12/14/04]
    - ISSUE: signature comparison; request for recanvassing of previously rejected ballots
        - Equal Protection Clause claim based on a disparity between signature-checking standards. 153 P.3d at 724.
        - Procedure for comparing signatures used in first canvass did not comport with Washington's statutory and regulatory scheme. 153 P.3d at 724.
    - RESULT: signature verification procedure in first canvass ok; no equal protection violation based on disparity between rejected provisional ballots; ballots may only be retabulated if they were counted or tallied in the previous count.
    - RATIONALE:

        - Signature verification procedure used in first canvass was sufficient, as voters were permitted to correct or update signatures until the day prior to the canvass (Nov. 16). 153 P.3d at 724.
        - No equal protection violation, as the petitioners only established a disparity in ballots rejected, not actual disparity in procedures. Also because they did not allege any particular procedure was faulty. 153 P.3d at 724.
- ***Washington State Republican Party v. King County Division of Records*, 103 P.3d 725 (Wash. 2004)** [Second Supreme Court review 12/22/04]
    - ISSUE: decision to recanvass ballots previously rejected to see if their rejection was erroneous
        - County canvassing board wished to recanvass provisional ballots coded "no signature on file" because the ballots had only been checked against the electronic database, not the paper records, the old system of registration, and records at the Secretary of State. 103 P.3d at 725-26. Challenge under state recanvassing statute. *Id.*
    - RESULT: The ballots incompletely canvassed may be recanvassed pursuant to Washington law. 103 P.3d at 728.
    - RATIONALE:
        - The ballots were never fully canvassed (because the secondary signature checks against other sources were never done), and the Board can correct this error through recanvassing. 103 P.3d at 727-28. This type of error is what the recanvassing statute is designed for. *Id.*

APPENDIX D: PROVISIONAL BALLOT LITIGATION BY STATE

Moritz College of Law
June 28, 2006

Arizona

- ***League of Latin American Citizens (LULAC) v. Arizona Secretary of State Jan Brewer***
    - ISSUE: wrong precinct
        - Lawsuit claims Arizona state policy to not count provisional ballots that were cast in the wrong precinct violates HAVA and the Equal Protection Clause of the 14th Amendment. Electionline.org – Litigation Summary (Feb. 14, 2005), http://www.electionline.org/Portals/1/Publications/litigation.update.Feb.14.05.pdf.
    - RESULT: N/A
    - RATIONALE: N/A

Colorado

- ***Colorado Common Cause v. Donetta Davidson*, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)**
    - ISSUE: wrong precinct; absentee voters getting provisional ballots
        - Lawsuit challenges a state guideline that prohibits anyone voting in the wrong precinct from casting a ballot in any race but the presidential election based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at *1.
        - Challenges state guideline that provisional ballots will not be counted if the voter applied for an absentee ballot based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at *1.
    - RESULT: votes cast in the wrong precinct may only count for president and vice president; provisional votes cast by voters who applied for absentee ballots must be counted.
    - RATIONALE:
        - Court felt that Congress had no intent to eliminate precinct-based voting, a constitutional form of organizing voting; therefore, votes cast in the wrong precinct may not be counted for county-wide issues. 2004 WL 2360485, at *11. Court also felt that the legislative history behind HAVA's passage supported this notion. *Id.*
        - Court felt that requiring voters to vote in the correct precinct is not an unconstitutional infringement on the right to vote. 2004 WL 2360485, at *14. The impact of the requirement is further lessened by the fact that poll workers will direct the voter to the correct precinct. *Id.* In addition, the Court felt that there was a compelling interest in preventing voter fraud furthered by the precinct system. *Id.*
            - The Court left the door open to the possibility that state-wide voting may be possible after a state-wide computerized database is established in 2006. *Id.*
        - Court felt that not allowing voters who requested an absentee ballot to vote provisionally would conflict with the purpose of HAVA to ensure that registered and eligible voters are allowed to vote provisionally. 2004 WL 2360485, at *11, 12.

Florida

- ***AFL-CIO v. Hood*, 885 So. 2d 373 (Fla. 2004)**
    - ISSUE: wrong precinct
        - Lawsuit claimed that the precinct system was an unnecessary and unconstitutional infringement on the right to vote under the Florida and U.S. Constitutions. 885 So.2d at 374.
    - RESULT: votes cast in the wrong precinct may be rejected and not counted.
    - RATIONALE: Precinct based system is a regulation of the voting process not a qualification placed on the voter and could have been reasonably deemed necessary to protect the integrity of the voting process. 885 So.2d at 376.
- ***The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073 (N.D. Fla. 2004)**
    - ISSUE: wrong precinct
        - Right to provisional ballot if in the wrong precinct (conceded by Florida prior to Order Granting Preliminary Injunction)
        - Right for vote to be counted if cast in the wrong precinct based on interpretation of HAVA language.
        - 342 F. Supp. 2d at 1074.
    - RESULT: voters in the wrong precinct are entitled to a provisional ballot, but are not entitled to have that vote counted if cast in the wrong precinct. 342 F. Supp. 2d at 1083.
    - RATIONALE:
        - Reading the statute to mean that a voter must be eligible at that polling place is consistent with HAVA's purpose, to allow voters to vote when they appear at the polling place, not to eliminate precinct voting. 342 F. Supp. 2d at 1079.
        - Reading is also consistent with votes being counted "in accordance with State law." 342 F. Supp. 2d at 1080.
        - Reading consistent with legislative history which says that poll workers should direct voters to the correct precinct not allow voters to vote at any polling site. 342 F. Supp. 2d at 1080.
        - "Eligible" in HAVA language means registered, 18 years of age, has lived in State for at least 30 days. 342 F. Supp. 2d at 1080.
        - HAVA intended to safeguard voter's right to vote but allow state law to determine whether that vote counts. 342 F. Supp. 2d at 1080.
        - Because election workers may make mistakes with on-the-spot determinations of the voter's polling place, a voter may not be denied a provisional ballot because an election official determined that he/she is at the wrong polling place. 342 F. Supp. 2d at 1081.

Iowa

- ***Dean Brooks et al. v. Attorney General Tom Miller***
    - ISSUE: wrong precinct
        - Challenge Attorney General decision that votes cast in the correct county but wrong precinct should be counted for Congress and President and Vice President only. Electionline.org – Litigation

Summary (Feb. 14, 2005), http://www.electionline.org/Portals/1/ Publications/litigation.update.Feb.14.05.pdf.
    - RESULT: N/A
    - RATIONALE: N/A

Michigan

- ***Bay County Democratic Party, et al v. Land et al,* 347 F. Supp. 2d 404 (E.D. Mich. 2004)**
    - ISSUE: wrong precinct; identification requirement for ballot to count
        - Lawsuit challenges Secretary of State's directive that votes cast in the wrong precinct but correct township, city, or village should not be counted based on HAVA. 347 F. Supp. 2d at 427-34.
        - Lawsuit challenges Secretary of State's directive that first time voters should be required to provided identification within six days of election day in order for their votes to count under HAVA, the Fourteenth Amendment to the Constitution, Michigan election law, and the Equal Protection Clause of the Michigan Constitution. 347 F. Supp. 2d at 434-35.
    - RESULT [but later overruled by Sixth Circuit]: votes cast in the wrong precinct but correct city, village, or township should be counted; identification may be required of provisional voters after the election in order for their votes to count. 347 F. Supp. 2d at 438.
    - RATIONALE:
        - With regard to the wrong precinct issue, the Court relies on the District Court decision in *Sandusky County Democratic Party v. Blackwell,* 339 F. Supp. 2d 975, 992-93 (N.D. Ohio 2004). *Bay County,* 347 F. Supp. 2d at 431-32.
        - The Court also relies on the "plain language" of HAVA – votes are to be counted in accordance with state law (dictates the *procedure* of counting); whether or not votes are counted is decided under HAVA; votes under HAVA are counted if the voter is "eligible" to vote. 347 F. Supp. 2d at 431-32.
        - With regard to the identification requirement, the Court found that the requirement was reasonable; that preventing voter fraud is a compelling interest; and that the requirement is applied uniformly and in a nondiscriminatory manner. 347 F. Supp. 2d at 435.
    - **<u>OVERRULED</u>**: 6th Circuit ruled that votes in the wrong precinct should not be counted and interpreted "jurisdiction," "eligible," and the HAVA provision concerning provisional ballots differently. *Sandusky County Democratic Party v. Blackwell,* 387 F.3d 565 (6th Cir. 2004).

Missouri

- ***Claude Hawkins, Brian Morahan, Susan Schilling and the Missouri Democratic Party v. Matt Blunt***
  U.S. District Court Western District of Missouri, Case No. 2:04-cv-04177
    - ISSUE: wrong precinct
        - Plaintiffs claim that not counting provisional votes cast in the wrong precinct is in violation of HAVA (preemption argument). Order

denying Plaintiffs' Motion for Summary Judgment, granting Defendants' Motion for Summary Judgment 3.

      - But the Secretary of State later decided to count those provisional ballots in which the voter was not directed to the correct polling place, so this issue was considered moot. Order 11.
    - Plaintiffs also disputed a provision of Missouri law which states that a voter should be directed to the correct polling place in lieu of receiving a provisional ballot. Order 10, 12. The provision has been interpreted to mean that if a voter refuses to go to the correct polling place, he shall be given a provisional ballot, which will not be counted (allege it is inconsistent with HAVA - preemption). Order 10, 12.
      - Allege that the Missouri law implementing HAVA "frustrates the intent" of HAVA. Order 13.
    - Plaintiffs also allege that the Missouri law violates the Equal Protection Clause because the decision not to count ballots cast at an incorrect polling place is arbitrary. Order 21.
  - RESULT: Provisional ballots cast in the wrong precinct should be thrown out provided that the voter was directed to correct precinct. Order.
  - RATIONALE:
    - HAVA was intended to be flexible in the way in which states could implement it, evidenced by use of the phrase "eligible under state law to vote." Order 14.
      - This reference to state law gives states the power to define voter qualifications for provisional ballots including where they can be cast in order to be counted. *Id.*
    - Court relies on statements of Sen. Bond and other HAVA supporters, stating that they did not intend to overturn State law regarding the jurisdiction in which a ballot must be cast and that poll workers should direct the voter to the correct polling place in the event of confusion. Order 15-16.
    - The laws do not violate the Equal Protection Clause because the goals and objectives of the precinct system are legitimate, and it guarantees those eligible to vote may do so. Order 22. The system is rationally related to ensuring a fair election. *Id.*

<u>New York</u>

- ***Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)**
  - ISSUES: wrong precinct; voters who voted provisionally because other voters had signed poll ledger in their place; provisional ballots in which the envelope did not identify the election district of the voter
    - Claims all based on N.Y. election law – once case got to Supreme Court, no claims based on Constitution or HAVA.
  - RESULT:

    - Provisional votes in which the voter was in the correct polling place, but wrong district should be counted; voters in the wrong polling place and wrong district should not be counted. 4 N.Y. 3d at 128.
    - Provisional ballots cast by voters who claimed that another voter voted in his/her place and signed the precinct ledger should not be counted. 4 N.Y. 3d at 129.
    - Provisional ballots in which the election district was not identified on the envelope should be counted. 4 N.Y. 3d at 129.
  - RATIONALE: provisional ballots should be counted if the ballots were in dispute only as a result of ministerial errors by the election board. 4 N.Y. 3d at 129.
    - Ballots cast in the correct polling place but wrong district were counted because they were assumed to be the result of ministerial error; the election officers should have directed the voter to the correct voting table. 4 N.Y. 3d at 128. Ballots cast in the wrong polling place and district were not counted because it would be unreasonable to require poll workers to ensure that voters are at the correct polling site. *Id.*
    - Provisional votes cast by voters who claimed another voter had voted in their place earlier were not counted because of the possibility of fraud. 4 N.Y. 3d at 129.
    - Provisional ballots lacking the election district on the envelope were counted because they were cast in the correct election district, and mishandling by election officials caused the ballots to become unidentifiable with a district (election officials placed post-it notes on the ballots containing the missing information, but the notes later fell off). 4 N.Y. 3d at 129.
  - DISPOSITION: application for rehearing denied – 2/7/05

North Carolina

- ***James v. Bartlet*, 607 S.E. 2d 638, 359 N.C. 260 (N.C. 2005)**
  - ISSUE: wrong precinct
    - Whether or not ballots cast outside the voter's home precinct should be counted as long as the voter casts a ballot for races in his home precinct. 607 S.E. 2d at 640.
  - RESULT: NC state law requires voters to vote in the correct precinct; therefore, votes cast in the wrong precinct were not counted for state and local elections (did not discuss federal elections). 607 S.E. 2d at 645.
  - RATIONALE:
    - Plain language of state statute requires that the voter be a resident of the precinct he votes in and registers in (refers to "the precinct" versus "a precinct"). 607 S.E. 2d at 642.
    - No intent to enable voters to vote outside their precincts by Congress or state legislature in enacting provisional ballot statutes. 607 S.E. 2d at 643.

    - Administrative Code sets out precise circumstances under which a voter may vote a provisional ballot and specifies that the voter must reside in the precinct. 607 S.E. 2d at 643.
    - Court may not remedy Election Board's decision to give provisional ballots to voters in a manner not authorized by State law. 607 S.E. 2d at 644.
    - Advantages of the precinct system: caps number of voters at one polling place; allows there to be one uniform ballot for all voters at that polling place; ballots may list only those elections a voter may vote for (less confusing); easier to monitor fraud; and it puts polling places closer to people's homes. 607 S.E. 2d at 644-45.

Ohio

- *Citizens Alliance for Secure Elections v. Michael Vu*
  U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
  - ISSUE: whether voters who have moved but not updated their registration should receive a provisional ballot or a regular ballot; whether voters inadvertently left off registration rolls should receive a regular or provisional ballot.
    - Plaintiffs claim that voters who have moved within the state but not updated their registration should not have to vote a provisional ballot at their new voting location but should instead vote a regular ballot. (Challenge guideline as in conflict with Ohio statute). Order Denying Plaintiffs' Motion for Temporary Restraining Order 2.
    - Claim that Board of Elections violated the NVRA when they failed to properly process voter registration applications and properly notify applicants of the status of their incomplete (yet timely) applications. Motion for a Temporary Restraining Order, Memorandum in Support 2-3.
      - Allege clerical errors were made in transcribing registration cards to computer records, which resulted in applications being considered incomplete (and thus, will force those voters to vote a provisional ballot rather than a regular ballot).
      - Allege that Board neglected to register voters whose applications were timely submitted.
    - Claim that the Board of Elections actions concerning these "incomplete" and lost registrations disenfranchise voters in violation of the Voting Rights Act. Motion Memorandum in Support 7.
  - RESULT: Provisional ballot procedure is sufficient to allow voters who were inadvertently removed from the registration list or should be on the registration list an opportunity to vote – so voters who have moved or were erroneously left off the list are permitted to vote provisionally.
  - RATIONALE: Provisional voting system seems reasonably calculated to remedy any situation in which a voter was left off the registered voter lists. Order 4.

  - Plaintiffs dismissed their case without prejudice after their request for a temporary restraining order was rejected. Plaintiff's Notice Of Voluntary Dismissal Without Prejudice.
- ***The League of Women Voters of Ohio et al v. Blackwell,*** **340 F. Supp. 2d 823 (N.D. Ohio 2004)**
  - ISSUES: wrong precinct & identification requirement for ballot to count
    - Wrong precinct issue. 340 F. Supp. 2d at 824.
    - Whether identification provided on election day should be required of provisional voters (voting provisionally because of ID requirement) in order for ballot to count. 340 F. Supp. 2d at 828.
      - Claim that it will cause provisional ballots voted by voters without identification (who cannot remember their numerical identifier, do not have a numerical identifier, or cannot return to the polls prior to closing) to be rejected.
        - Fourteenth Amendment fundamental rights claim.
        - Claim under HAVA based on interpretation of the "eligible" language.
  - RESULT:
    - Wrong precinct issue decided already in *Sandusky County Democratic Party,* and even though it was on appeal at the time of the decision, the Judge decided that the relief granted (or not) from that case would be sufficient to serve the interests of these plaintiffs as well (he did not reach a decision on the issue). 340 F. Supp. 2d at 824.
    - Identification or oral recitation of identification number (DL or SS) may be required before the polls close in order for a provisional ballot to count. 340 F. Supp. 2d at 831.
  - RATIONALE:
    - Identification may be required to preserve the integrity of elections and prevent voter fraud, which outweighs the interest in ensuring that every ballot count. 340 F. Supp. 2d at 829. Further, there is no less burdensome way to detect and prevent election fraud. *Id.*
    - Identification may be required because HAVA allows it; the requirement affects a small number of voters (registered by mail, voting for the first time, have no identification, cannot recite a numerical identifier); it is easy to obtain the identification information (telephone, quick return home); and notice is given of the requirement on the registration form. 340 F. Supp. 2d at 830.
    - Identification may be required because HAVA's language about "eligible under State law to vote" only means that the name on the registration form is eligible to vote. 340 F. Supp. 2d at 831. A voter must still prove that he/she is the same person as the person on the registration form, who is "eligible" to vote under State law, and proving identity is a reasonable burden. *Id.*
- ***Sandusky County Democratic Party v. Blackwell,*** **339 F. Supp. 2d 975 (N.D. Ohio 2004)** – Order in District Court case, 10/14/04

***Sandusky County Democratic Party v. Blackwell*, 340 F. Supp. 2d 815 (N.D. Ohio 2004)** – Order in District Court case, 10/20/04
***Sandusky County Democratic Party v. Blackwell*, 386 F.3d 815 (6th Cir. 2004). –** Order in Sixth Circuit case, 10/23/04
***Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004) –** Opinion in Sixth Circuit case, 10/23/04
***Sandusky County Democratic Party v. Blackwell*, 361 F. Supp. 2d 688 (6th Cir. 2005)** – Opinion in District Court in Plaintiff's request for attorney's fees, which was granted, 3/3/05

- ISSUE: wrong precinct
  - Plaintiffs claim that a Directive by the Secretary of State denies provisional ballots to voters inadvertently purged from voter lists or to those who go to the wrong precinct and only allows provisional ballots to voters who have moved and not updated their registration. Complaint 2-3.
    - Claim that this violates the purpose of HAVA – to ensure that all electors are eligible to vote provisionally. 339 F. Supp. 2d 975.
    - Claim that "jurisdiction" means the same as the geographic unit which maintains voter registration rolls and the same as its meaning in the NVRA. 387 F.3d at 574-75.
  - Statutory claim that HAVA provides an absolute right to cast a provisional ballot which counts provided that the voter is registered and eligible. Complaint 6-7.
    - Provisional ballots should be given to every voter who attempts to vote in the correct county but not necessarily the correct precinct. Complaint 10-11.
  - Claim that a voter (who has moved) who goes to one polling place attempting to vote and then goes to the other later should be allowed a provisional ballot. Complaint 12, 14.
- RESULT: Votes cast in the wrong precinct may not be counted by a state, but voters must be permitted to cast them. 386 F.3d at 816. HAVA secures the right to cast a provisional ballot; the legality of the ballot must be determined under state law. 386 F.3d at 576.
- RATIONALE:
  - Precinct system rooted in tradition; no indication Congress wished to completely overhaul the voting system of most states. 387 F.3d at 568; 387 F.3d at 576.
  - Advantages of precinct system: caps the number of voters at one place; allows ballot for all voters at one precinct to be the same for all elections; ballot lists only elections the voter may vote for (less confusing); easier to monitor and prevent fraud; and puts polling places closer to voter's homes. 387 F.3d at 569.
  - Court believes that the totality of the legislative history supports the notion that jurisdiction equals precinct, and votes cast outside the

voter's precinct should not be counted under HAVA. 387 F.3d at 575.

    - The District Court's broad reading of "eligible under state law to vote" leads to the conclusion that a voter could vote multiple times in one election, and all of the provisional ballots would count if state law is not used to determine eligibility (since it is Ohio not federal law that specifies that a voter can vote only once).
    - Court relies on the presumption that Congress must be clear in order to alter the state-federal balance; thus, Congress would have been more clear if it intended to eliminate state control over polling location. 387 F.3d at 578.
    - But a provisional ballot must be provided to a voter, as HAVA's purpose was to prevent on-the-spot denials of ballots to voters determined ineligible by precinct workers. 387 F.3d at 574.
      - Court believes that HAVA's provisional voting was designed to compensate for the impossibility of having election officials with "perfect knowledge." 387 F.3d at 570. Under this rationale, provisional voting is used when a voter's eligibility in that precinct cannot be verified, but the voter insists that he/she is eligible because it is possible that the election officials do not have perfect information. *Id.*
- ***Schering v. Blackwell***
  U.S. District Court for the Southern District of Ohio, Case No. 1:04-cv-755.
  - ISSUE: equal protection issue
    - Plaintiffs allege that the process for evaluating provisional ballots in Ohio violates the Equal Protection Clause; want uniform standards for evaluating provisional ballots
  - RESULT: Plaintiffs filed a stipulated dismissal. 3/15/05
  - Case never reached opinion.
- ***State of Ohio ex rel. Mackey et al v. Blackwell et al,* No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)**
  - ISSUES: equal protection issue & wrong precinct issue & how verification (against registration records) procedure should be conducted
    - Equal protection issue from different treatment on whether a voter should have a provisional ballot and different treatment on whether a provisional vote should be counted.
      - Claim that there were inconsistent standards for determining whether or not a voter received a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2.
      - Claim that there were inconsistent standards for determining whether or not to count a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2, 9.
    - Claim that votes cast in the wrong precinct should be counted given that many voters did not receive assistance to correct precinct, as

required by Secretary of State's directive. Original Action in Mandamus 3, 16-17.

    - Claim that provisional ballots lacking a signature, HAVA sticker, or other required information on the envelope were wrongfully rejected – allege that these are nonmaterial errors in violation of VRA. Original Action in Mandamus 6-7, 11, 14.
    - Claim that provisional ballots should be verified by hand against registration records rather than only against computerized records. Original Action in Mandamus 12-13.
      - Allege that database was incomplete – some registration forms were not indexed and accessible to poll workers. *Id.*
      - Allege that registration forms were erroneously processed. *Id.*
  - RESULT: Dismissed for failure to state a claim upon which relief can be granted. 2004 WL 2973976, at *2.
- ***White v. Blackwell, et al.***
  U.S. District Court for the Northern District of Ohio, Case No. 3:04CV 7689.
  - ISSUE: absentee voters getting provisional ballots
    - Absentee voters who failed to receive absentee ballots in the mail who wish to vote provisionally at the polls under HAVA.
      - Claim under HAVA that the Secretary of State and Board of Elections interpreted HAVA incorrectly. Complaint 8.
  - RESULT: Anyone who shows up to the polls and asserts eligibility to vote shall be permitted to cast a provisional ballot, including those who previously requested an absentee ballot. Memorandum Opinion and Order 3-4.
  - RATIONALE: HAVA, as interpreted in *Sandusky County Democratic Party*, is clear, anyone who asserts eligibility to vote is able to receive a provisional ballot under HAVA. Memorandum Opinion 3-4.

Washington

- ***Borders v. King County***
  Superior Court, Chelan County, No. 05-2-00027-3 [election contest filed 1/7/05 contesting the certification of the results of the election, decision 6/6/05]
  - ISSUES: provisional ballots incorrectly tabulated with regular ballots before being verified; verification for provisional ballots; provisional ballots without labels. Court's Oral Decision 6/6.
    - Provisional ballots cast directly into electronic voting machine or ballot tabulated before it was verified. Court's Oral Decision 6/6.
    - No signature or registration verification conducted for certain provisional ballots. Court's Oral Decision 6/6.
  - RESULT: election not overturned – even though illegal votes cast – no proof who they were cast for or whether the voter voted in the particular race at all. Court's Oral Decision 6/6.
  - RATIONALE:
    - Cannot prove whether a voter voted for a particular race; do not know which ballots were illegal. Court's Oral Decision 6/6.
    - No evidence of actual ballot stuffing. Court's Oral Decision 6/6.

        - Reconciliation issues and irregularities are common in elections. Court's Oral Decision 6/6.
        - No evidence the irregularities were intentional. Court's Oral Decision 6/6.
        - Probability techniques (proportional deduction) used to predict who an illegal voter voted for are not generally accepted scientific techniques. Court's Oral Decision 6/6.
        - Judicial restraint from interfering with elections. Court's Oral Decision 6/6.
        - Precedent – challenge under a WA statute, which previously had been interpreted to require direct or indirect wrongdoing by someone intending for the irregularity to help one candidate. Court's Oral Decision 6/6.
- ***McDonald, et al v. Secretary of State,* 103 P.3d 722 (Wash. 2004)** [First Supreme Court review 12/14/04]
    - ISSUE: signature comparison; request for recanvassing of previously rejected ballots
        - Equal Protection Clause claim based on a disparity between signature-checking standards. 153 P.3d at 724.
        - Procedure for comparing signatures used in first canvass did not comport with Washington's statutory and regulatory scheme. 153 P.3d at 724.
    - RESULT: signature verification procedure in first canvass ok; no equal protection violation based on disparity between rejected provisional ballots; ballots may only be retabulated if they were counted or tallied in the previous count.
    - RATIONALE:
        - Signature verification procedure used in first canvass was sufficient, as voters were permitted to correct or update signatures until the day prior to the canvass (Nov. 16). 153 P.3d at 724.
        - No equal protection violation, as the petitioners only established a disparity in ballots rejected, not actual disparity in procedures. Also because they did not allege any particular procedure was faulty. 153 P.3d at 724.
- ***Washington State Democratic Party v. King County Records, Elections & Licensing Services Division***
  Superior Court, King County, 04-2-36048-0 SEA [Decision 11/16/04]
    - ISSUE: verifying ballots/disclosure of voters in risk of rejection for signature problems
        - King County elections officials ordered to give the State Democratic Party the names of 929 voters whose provisional ballots may be discarded because of signature problems. Memorandum Opinion 2.
            - Challenge under Public Disclosure Act. Memorandum Opinion 2-3.
                - County argued that HAVA prevented disclosure. *Id.*

            - Challenge under Equal Protection Clause. Memorandum Opinion 4.
        - Republican Party intervened and wanted provisional votes submitted by third parties (such as the Democratic Party) to be rejected, requiring voters to come down to the county board to verify their questioned signature. Memorandum Opinion 5.
    - RESULT: Democrats were entitled to disclosure of the names so that the voters could be contacted to verify their ballots; equal protection claim dismissed. Votes brought in by third parties should be counted.
    - RATIONALE:
        - Identity of voter or disposition of provisional ballots, but not votes cast, are subject to Public Disclosure Act. Memorandum Opinion 4.
        - Disclosure of voters' names leads to greater notice, which is the goal. Memorandum Opinion 4.
        - Equal protection claim – dispute is premature, and the evidence is hypothetical. Memorandum Opinion 4.
        - There is no evidence of fraud, no showing that King County is acting illegally, best protection against fraud is public disclosure, so Republicans' claim is dismissed. Memorandum Opinion 6.
- ***Washington State Republican Party v. King County Division of Records*, 103 P.3d 725 (Wash. 2004)** [Second Supreme Court review 12/22/04]
    - ISSUE: decision to recanvass ballots previously rejected to see if their rejection was erroneous
        - County canvassing board wished to recanvass provisional ballots coded "no signature on file" because the ballots had only been checked against the electronic database, not the paper records, the old system of registration, and records at the Secretary of State. 103 P.3d at 725-26. Challenge under state recanvassing statute. *Id.*
    - RESULT: The ballots incompletely canvassed may be recanvassed pursuant to Washington law. 103 P.3d at 728.
    - RATIONALE:
        - The ballots were never fully canvassed (because the secondary signature checks against other sources were never done), and the Board can correct this error through recanvassing. 103 P.3d at 727-28. This type of error is what the recanvassing statute is designed for. *Id.*

APPENDIX E: STATE SUMMARIES

June 28, 2006

Alabama

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
6560	1836	28	0.10

All data in the tables are drawn from information in the Election Day Survey, Chapter 6, and the Electionline document "Election Reform Briefing 10: Solution or Problem? Provisional Ballots in 2004."

This was the first general election in which Alabama allowed full provisional ballots to be cast, switching from a previous affidavit ballot system that had allowed voters whose names were not on the rolls to cast a ballot if they signed an affidavit to verify their identity and registration status. The number of ballots cast was unusually low for a state without a statewide voter registration database. The percentage counted put Alabama in the bottom quarter of the country. It did not count ballots cast outside the correct precinct. Ballots were verified by county election boards that checked the registration and address reported on the provisional ballot.

The percent counted in the general election was much lower than in the primary elections held earlier in the year, in which about half of the provisional ballots were counted. The general election also had more than 6 times as many provisional ballots cast as the primaries. Provisional ballots were supposed to be distributed if the voter had applied for an absentee ballot but not received it, lacked valid ID (not photo ID necessarily), was not on the registration rolls, or was challenged by a poll watcher.

The percentage of provisional ballots counted was lower in urban counties, such as Jefferson County (Birmingham), than in rural counties. Areas with the greatest concentration of African-American voters were less likely than other areas to have provisional ballots counted.[1] Problems with access to provisional ballots were concentrated in Birmingham and Montgomery, affecting blacks and students most severely.[2] The cause of these problems seems to have been that newly registered voters were not always listed on the current rolls.

The only outcome that appears to have depended on provisional ballots was the vote on proposed Amendment 2. This effort to strike segregation-era provisions from the state constitution failed, by a margin smaller than the number of provisional ballots.[3] If a higher percentage of provisional ballots had been counted, the likelihood of the amendment's passage would have increased dramatically.

Election officials received specific training in how to handle and count provisional ballots.[4] Whether this training will be provided regularly in the future remains to be determined. Alabama had a very efficient system whereby voters could see if their vote counted, using a toll-free number that has results within 10 days, much faster than in most other states. But this notification system is based solely on policy and depends heavily on efficient county officials; it has no legal backing to make sure that it continues in other elections.

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[1] Birmingham News (Alabama), November 13, 2004 Saturday, LOCAL NEWS; Pg. 11A, " JEFFCO ELECTION OFFICIALS REJECT 84% OF PROVISIONAL BALLOTS"

[2] See http://www.flcv.com/alabama.html

[3] The Associated Press State & Local Wire, November 5, 2004, "Provisional count next week could determine Amendment 2"

[4] Birmingham News (Alabama), October 24, 2004 Sunday, NEWS, 388 words, METRO BRIEFS

Alaska

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
23275	22498	97.00	7.20

Elections in Alaska allow what are called "questioned ballots," similar to the provisional ballots mandated by HAVA. This practice is not new, giving Alaska an experience different from other states that are new to fail-safe forms of voting. Alaska led the nation in provisional balloting in two different ways: It had the highest percentage of provisional ballots cast, as those ballots accounted for 7.2% of the total votes in the state. Provisional ballots were counted at the highest rate in the country, 97% of those cast. This is nearly 30 percent higher than the national average of 68%. Alaska probably had such a high percentage of provisional ballots cast because it has a fairly strict ID regime. It requires all voters to show one of the HAVA-approved forms of identification, at the polling place in order to cast a regular ballot. The application of ID requirements to all voters means that those without ID will boost the number of provisional ballots cast by properly registered voters who failed to bring their ID with them. This ID requirement can be waived if the polling place workers know the voter.

Provisional ballots are available to a wide range of individuals. Anyone without ID can cast a provisional ballot, even if the voter is not in the proper precinct. These ballots are sent to a bipartisan review board that determines if the voter was registered in the state and if the signature on the ballot matches the signature on record. After the review board verifies the ballots, the Elections Division informs the voter if the vote counted by a hotline within 30 days of the election and by letter within 60 days. (This notification system will change by the 2006 midterm elections, when a website will be used to inform voters if their votes were counted.) Any vote cast within the correct jurisdiction, defined quite broadly in this state that lacks counties, is eligible to be counted. Nevertheless, the state made precinct verification possible through the Elections Division's website in an attempt to minimize the difficulty of having people vote outside their correct precinct. It also informed voters of ID requirements in an attempt to reduce questioned voting. Even outside the precinct, voter registration could still be verified through the state's voter registration database.

States with statewide registration databases might be expected to have recourse to fewer provisional ballots because the process of on-the-spot verification would be more efficient. In Alaska, this was not the case because the ID regime seems to trump the efficiency of a database. Provisional balloting attracted almost no media coverage inside the state, suggesting that the process lacked controversy. This is probably attributable either to the high percentage of votes counted or because provisional balloting was not new for the 2004 election.

Arizona

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
101536	73658	73.00	3.66

Arizona was fourth in the nation in provisional ballots cast, and, at 3.66%, third in the portion of its total vote. The state counted 73% of the provisional ballots cast, second highest among states with a statewide voter registration database and third highest among states that disqualified votes cast outside the correct precinct. The Number of provisional ballots is probably large because of its large Hispanic population. The Election Day Study found that "predominantly Hispanic jurisdiction had the highest rate of casting provisional ballots.[5]

Provisional ballots were given to voters whose names were not on the registration rolls at the polling location. They are later verified by confirming the voter's registration information and polling location as printed on the ballot envelope.

The state website disseminated little information about provisional voting, the state's ID requirements (not photo), or the location of precincts. Groups like the National Council of La Raza and the Mexican American Legal Defense and Education Fund informed Latino voters about provisional opportunities. The League of United Latin American Citizens sued after the election seeking to have votes cast in the incorrect precinct counted. It lost in U.S. District Court.[6]

The electoral system in Arizona is changing dramatically with the passage of Proposition 200, which modifies the state's voter ID laws. Passed in November 2004, it requires all voters to provide identification before voting. The Proposition did not exempt provisional ballots from this requirement. Provisional voters in the future will have to display ID in order to cast something less than a regular ballot.

The state Attorney General delayed implementing the law because he believed that it violated federal voting regulations like HAVA and the Voting Rights Act of 1965, under which certain Arizona counties receive greater scrutiny for failing part of the Section 4 formula that determines "covered jurisdictions" under Section 5.[7] Nevertheless, the Department of Justice approved the bill's ID measures, saying that it did not violate the VRA by placing minority groups, 25.3% Latino, 5% American Indian, and 25.9% that speak a language other than English at home, in a worse position that they had been previous to its enactment, the so-called non-retrogression principle. The Governor vetoed a later bill to implement the law, saying that the bill violated HAVA's provisional ballot clauses. An agreement has finally been reached. It exempts Native Americans from the new ID requirements, but all other voters, including provisional voters, must produce ID.[8]

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[5] See Election Day Survey, Chapter 6, p. 10.

[6] *League of United Latin American Citizens (LULAC) v. Arizona Secretary of State Jan Brewer*

[7] The Section 4 Formula, as described by the US Department of Justice, http://www.usdoj.gov/crt/voting/sec_5/about.htm, "The first element in the formula was that the state or political subdivision of the state maintained on November 1, 1964, a "test or device," restricting the opportunity to register and vote. The second element of the formula would be satisfied if the Director of the Census determined that less than 50 percent of persons of voting age were registered to vote on November 1, 1964, or that less than 50 percent of persons of voting age voted in the presidential election of November 1964." Amendments since the original passage of the bill have updated the dates used to decide which jurisdictions receive stricter scrutiny.

[8] http://www.azcapitoltimes.com/main.asp?SectionID=2&SubSectionID=2&ArticleID=2423

Arkansas

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
7675	3678	48.00	0.35

Arkansas had no statewide registration database, counted ballots cast outside the proper precinct, and was not new to provisional voting. The state's election website provided information about provisional balloting, but it did not describe the state's ID requirements (non-photo). Nor could voters verify their registration or find their proper polling place on the website.

The state's low percentage of ballots counted might suggest problems in the system. Pulaski County (Little Rock) is the state's most populous. Its supply of provisional ballots did not arrive until a short time before the election.[9] The county then ran out of provisional ballots on Election Day.[10] Similar problems of timing and resources affected other counties Arkansas left notification about whether or not provisional votes counted up to the individual counties.

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[9] Pulaski County without provisional ballots, The Associated Press State & Local Wire, October 20, 2004, Wednesday, BC cycle, State and Regional, 570 words, By JAMES JEFFERSON, Associated Press Writer, LITTLE ROCK

[10] Provisional ballots provide bump in otherwise smooth voting in state, Arkansas Democrat-Gazette (Little Rock), November 3, 2004 Wednesday, ARKANSAS, 1396 words, BY CHARLIE FRAGO ARKANSAS DEMOCRAT-GAZETTE

California

PB Cast	PB Counted	Percent Counted	Provisional Vote/Total Vote
66, 408	491,765	74%	3.96%

California's provisional ballots made up approximately 1/3 of the total cast in the country. They accounted for 3.96% of the total votes cast in the state, second highest in the country behind Alaska. Its Percent Counted was 6% higher than the national average, which put in the top quarter of states without a statewide voter registration database.

Reliance on provisional ballots was heavy for several reasons.

- The registration deadline was only 15 days before the election (in previous years it had been 29 days). The short time between the close of registration and the election would have stretched the capacity of election officials to handle the paperwork and increased the number of voters left off registration rolls.[11] Since California lacks a statewide voter registration database, poll workers unable to verify registration would have to give out provisional ballots.
- The state counted votes cast outside the correct precinct, likely increasing counting rates.
- The large Latino population was well-informed about the possibilities of provisional voting and took advantage of the opportunity.[12]
- Local poll workers received training at the county level.[13] That the training process was overhauled after the election indicates that it may have proved insufficient. State officials have now created stricter standards for poll worker training.

Counties were responsible for notifying voters if their provisional votes were counted. The California elections website informed voters about the possibilities of provisional voting, a system that was not new in California, and helped voters verify their precinct location. Nevertheless, state law still required that provisional ballots cast in an incorrect precinct be counted so long as they were within the proper county.

The state had only minimal ID requirements, asking only for the HAVA-mandated identification for first-time voters who did not present it while registering, though this requirement was not spelled out on the state's elections website. Similarly, because of the lack of a registration database, voters were incapable of verifying their registration before going to the polls through a website.

Since the election, demands for election reform have been few (the state is consumed by the debate over redistricting). In San Diego there is an effort to tighten voter ID laws, a move initiated by the former mayor.[14]

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[11] http://www.ss.ca.gov/elections/ror_102102.htm

[12] See Election Day Survey, Chapter 6, p. 10, which states that "predominantly Hispanic jurisdictions had the highest rate of casting provisional ballots."

[13] http://www.igs.berkeley.edu/library/htPollWorkerTraining.html

[14] Horn cites border fence in wide-ranging speech; State of N. County address pulls in 150, The San Diego Union-Tribune, March 4, 2005 Friday, ZONE; Pg. NC-3; NI-3, 327 words, Daniel J. Chacon, STAFF WRITER, VALLEY CENTER

Colorado

PB Cast	PB Counted	Percent Counted	Provisional Vote/Total Vote
51,477	39,163	76%	1.84%

The counting rate in Colorado ranks it fifth among states without a statewide registration database and places it solidly above the national average. Provisional ballots accounted for 1.84% of the total vote, in the top quarter nationwide.

Provisional ballots were open to voters who were not on the registration rolls. The lack of a registration database made it impossible to verify registration at the polling place. The provisional ballot was also open to first-time voters who lacked proper ID. Notification about ballot status was left up to individual counties.

Colorado used a new provisional balloting system in 2004, replacing an older system in which provisional ballots could be obtained under limited circumstances, essentially for voters who had recently moved. Colorado required provisional ballots be cast in the correct precinct. The state elections website provided information about provisional ballots and the state's ID requirements (non-photo), but did not help voters confirm their correct polling place. The website made a critical mistake about the state's ID requirements, presenting the registration ID requirements for first-time voters as stricter than they in fact were.[15] Despite the accessibility of information, the election was fraught with uncertainty and suspicion.

A poll taken a week before the November election found that 46% of those surveyed considered voter fraud likely.[16] One voter in five thought it likely his vote would not be counted. One in three thought she would be prevented from voting by legal technicalities. Contributing to this uncertainty were well-publicized reports that the official training manual for election judges had been released only one week before the election, after approximately half of all poll workers had been trained.[17] This atmosphere of anxiety and suspicion led to discussion of election reform measures after the election. In fact, the system seems to have worked well in the November 2004 elections.[18]

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[15] STATE'S VOTER REGISTRATION FORM CONTAINS ERROR ON ID REQUEST, Rocky Mountain News (Denver, CO), October 2, 2004 Saturday Final Edition, NEWS; Pg. 18A, 276 words, Julie Poppen, Rocky Mountain News

[16] MANY COLORADO VOTERS FEAR FRAUD; ELECTION CONFIDENCE SHAKY, POLL SHOWS, Rocky Mountain News (Denver, CO), November 1, 2004 Monday Final Edition, NEWS;
Pg. 4A, 847 words, Charlie Brennan, © 2004, Rocky Mountain News

[17] Poll judges confused about rules Some observers say the state's standards on voter IDs and provisional ballots are not being followed., The Denver Post, October 27, 2004 Wednesday, FINAL EDITION, A SECTION; Pg. A-07, 799 words, Susan Greene Denver Post Staff Writer

[18] EDITORIAL Boost for election credibility, The Denver Post, June 12, 2005 Sunday, FINAL EDITION, PERSPECTIVE; Pg. E-06, 271 words

Connecticut

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
1573	498	32.00	0.03

Connecticut's low percentage of provisional votes counted puts it into the lower half of states with statewide registration databases. Provisional ballots accounted for a small percentage of the final vote, in the bottom third nationwide. The 2004 general election was Connecticut's first attempt at a provisional voting system. The state's website provided voters with information about the new system and also explained the state's ID requirement (non-photo).

Voters given provisional ballots are required to sign an affidavit that they are registered and are the person they are claiming to be. In this way, the Connecticut system resembles affidavit voting systems, formerly used in Alabama, Kentucky, Michigan, Mississippi, and Texas. Provisional ballots are given to voters whose names do not appear on registration rolls. If the provisional ballots are cast outside the correct precinct, they are not counted. The validation process involves acceptance of the affidavit's veracity by election officials after it is compared to state registration records. A toll-free phone can be used to determine if a ballot was counted.

Elections in Connecticut are centralized. Counties have no role and cities and towns are merely distributors of ballots. This system makes HAVA primarily relevant to the state government, while local administrators are not concerned with the federal legislation except as it is interpreted for them by state officials. Inconsistent application of procedures across jurisdictions is not an issue in Connecticut.

Delaware

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
384	24	6.00	0.01

Delaware was last in the country in percentage of provisional ballots counted and third lowest in the country in the number cast. Delaware's statewide registration database minimized the number of people who needed provisional ballots and it was accurate enough to increase the likelihood that those who did receive them were not actually registered. Delaware counted provisional ballots cast outside the correct precinct. The state's elections website provided information about provisional voting and helped voters find their precinct. It did not explain the state's ID requirements (non-photo) nor did it allow voters to verify registration, odd in a state with a statewide database.

The statewide voter registration database reduced the number of people who received provisional ballots because they were not of local rolls. Thus most of those who voted were, in fact, not actually registered. Their votes were not counted.

District of Columbia

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
11212	7977	71.00	3.51

The District counted a high percentage of provisional ballots cast, placing it third in the country among areas with voter registration databases. These ballots accounted for 3.51% of the total vote, fourth in the nation. D.C. counted provisional ballots cast outside the correct precinct.

Provisional ballots were distributed to voters not on the rolls, voters in the hospital, voters who could not get absentee ballots, and others who were similarly disadvantaged. The District o had one of the most comprehensive elections websites in the country, with a wealth of information to help voters. The site spelled out provisional balloting, even though the system was not new in DC. It allowed voters to verify their registration, possible because of the registration database, and helped voters find their precincts. By combining all of this information in one place, it is no surprise that DC could have so many voters who were knowledgeable enough to obtain provisional ballots and fill them out in such a way as to avoid disqualification.

Ballots were evaluated verifying the registration information listed on the provisional ballot envelope. Voters could check the DC elections website to discover if their vote was counted.

Florida

PB Cast	PB Counted	Percent Counted	Provisional Vote/Total Vote
27742	10017	36.00	0.13

Florida counted provisional ballots at the seventh lowest rate of states without a voter registration database. Among states that disqualified ballots cast in the wrong precinct, it was much closer to the median. The state's disqualification of votes cast in improper precincts came after a lengthy court battle over the definition of "jurisdiction."[19] Its elections website informed voters of the state's photo ID requirement, but it did not provide information about provisional voting or give voters the ability to verify registration or locate the precinct in which they were required to vote.

Provisional ballots were given to first-time voters without ID, voters not on registration rolls, and challenged voters, a sizable demographic in this battleground state. The County Canvass Board of each county used signature matching to verify provisional ballots against registration records. Voters were then informed by these same boards as to the status of their provisional ballot, though how this was done varied from county to county.

Election reform efforts in Florida are inextricably tied up with views about the 2000 election. As questions about purge lists and voting machines dominated the headlines, those issues became critical in the passage of HAVA. At the same time, the provisional ballot system that did exist in Florida prior to HAVA attracted little attention as to why it did not serve as a fail-safe for registered voters whose name did not appear on the rolls. Florida experienced much litigation leading up to the 2004 election. This litigation, much more than legislation, shaped Florida's voting rules by delineating the counting principles that would apply across the state.[20] Among other rules, this litigation caused courts to rule that voters in an incorrect precinct were entitled to a provisional ballot, but they were not entitled to have it counted.[21]

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[19] http://www.sptimes.com/2004/10/19/State/High_court_clarifies_.shtml

[20] Advocacy organizations continue to object to the resolution of this litigation. See www.aclu.org/Files/getFile.cfm?id=16802

[21] See *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073 (N.D. Fla. 2004)

Georgia

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
12893	3839	30.00	0.12

Even though Georgia counted ballots cast outside the correct precinct, its number of provisional ballots counted is low. It has a voter registration database. Among similar states, Georgia's 30% counting rate is only slightly below the median, but it is next to last among states that count provisional ballots cast outside the correct precinct. Provisional ballots made up .12% of the total vote in Georgia, below the national median.

Georgia, a state using provisional ballots for the first time, counted provisional ballots by verifying the information given by voters on sworn affidavits signed at the polling precinct. Voters were then informed by county officials if their vote counted. The reliance on the counties increased the variety of notification procedures across the state. The state had an informative elections website, helping voters verify registration, locate precincts, and discover the states ID requirements (non-photo).

Despite little evidence of complaints about vote fraud in 2004, the state enacted tighter ID requirements. These new standards gave Georgia one of the highest ID barriers in the nation by requiring all voters to show government-issued photo ID in order to vote. This new law is now awaiting pre-clearance by the Department of Justice's Civil Rights Division.[22] This clearance process is opposed by a variety of groups that represent minorities, including NAACP and MALDEF, individual rights groups like the ACLU, and labor unions, including the AFL-CIO.[23]

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[22] Perdue signs ID bill; Justice Department will review matter, The Atlanta Journal-Constitution, April 23, 2005 Saturday, Home Edition, Pg. 1B;, 701 words, SONJI JACOB, CARLOS CAMPOS

[23] Foes rip passage of voter ID bill, The Atlanta Journal-Constitution, April 1, 2005 Friday, Home Edition, Pg. 1D;, 542 words, SONJI JACOBS, CARLOS CAMPOS

Hawaii

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
346	25	7.00	0.01

Hawaii's percent counted was second lowest in the nation. Provisional ballots accounted for .01% of the total vote in the state, also second lowest nationwide. Hawaii has a voter registration database. It did not count provisional ballots cast outside the correct precinct. Provisional balloting is new to Hawaii. Hawaii's elections website did not provide easily accessible information about provisional balloting, though it did explain the state's photo ID requirements and helped voters find their precinct.

Those who cast a provisional ballot in Hawaii were not on the rolls or were first-time voters that did not meet the HAVA ID requirements. These voters filled out an affidavit to attest to their identity and registration status. Officials then verified these affidavits with the state's registration database in order to see which votes should count. Voters could call a phone number to see if their vote counted. Only 25 were counted out of the 346 cast. Hawaii's database was effective in limiting the number of provisional ballots cast. One factor that surprisingly did not raise the percent counted in the state was the confluence of the ID requirement with provisional ballots. Though the state required photo ID from voters, those who lacked ID could vote provisionally, without the requirement to return later and show ID. In this situation, it appears that the success of the database in solving provisional ballot-inducing problems ahead of time trumps the state's leniency about voters returning later with the proper identification required to cast a regular ballot.

Illinois

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
43464	22167	51.00	0.42

Illinois' number of provisional ballots cast was just out of the top 10 nationwide. Illinois was a first-time provisional ballot state, it lacked a statewide voter registration database, and it counted provisional ballots cast outside the correct precinct. Verification standards that were easier to meet than those employed by many other states probably encouraged poll workers to be more helpful in passing out provisional ballots. The state's elections website also offered information about provisional ballots, and voters could visit the site to determine if their ballots had been counted.

Illinois used affidavits in the verification process, allowing vote counters to check the information about which the voter had sworn in order to count the vote. Voters could check a website to determine if their votes counted.

Illinois offers an instructive lesson in the relationship between ID requirements and allegations of fraud. East St. Louis has generated voting-related criminal conspiracy convictions, while Chicago remains plagued with accusations that the dead continue to be politically active.[24] Nevertheless, state ID requirements remain lax, only asking for HAVA requirements for first-time voters, requiring other voters to sign in. For a state lacking a registration database, the possibilities of multiple voting seem high. Provisional ballots have not been linked to fraud in Illinois; the relatively low percent counted makes them appear, at least on the surface, to be relatively secure.

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[24] Voting problems alive, well in heart of Illinois, The Pantagraph (Bloomington, Illinois), January 11, 2005 Tuesday, EDITORIAL; Pg. A8, 346 words

Indiana

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
4029	598	15.00	0.02

Indiana lacked a statewide database and did not count ballots cast outside the correct precinct, which held down the verification rate. Provisional ballots are new to Indiana. The state's website provided little information for voters, especially about the state's new provisional voting system or the state's ID requirements.

Provisional ballots were given to those not on registration rolls or lacking ID. Also, those who lacked identification were required to return to the precinct later. The ballots of all those who did not return were disqualified automatically. After returning with ID, voters then had to have their registration verified, through comparison with local records. At this point, Indiana provisional voters were able to call a toll-free phone number in order to discover if their ballot had been counted. Since the election, the state has overhauled parts of its system related to voter identification, though the basic provisional ballot structure remains intact.

The state has adopted a requirement of photo ID.[25]

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[25] Daniels signs voter ID bill; ICLU plans lawsuit, The Associated Press State & Local Wire, April 28, 2005, Thursday, BC cycle, State and Regional, 350 words, INDIANAPOLIS

Iowa

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
15406	8038	52.00	0.53

Iowa's percent counted was near the median for states without a voter registration database and slightly above the median for states that disqualified ballots cast outside the correct precinct. Iowa enacted provisional voting before the passage of HAVA. The state's elections website provided information about provisional voting and ID requirements, but the lack of registration database made it impossible for voters to verify their registration or find their polling place online.

Provisional ballots were chiefly available to voters not on the registration rolls, though challenged voters, relatively common in this battleground state, also could vote provisionally. Provisional voters brought ID later in order for their ballots to count, if they were first-time voters who still needed to provide ID. They were then notified by mail if the ballot had been counted.

Iowa can be considered a fairly typical state, representative of most procedures and most outcomes nationally.

Kansas

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
45563	31805	70.00	2.68

Kansas' percent counted placed it fifth among states that did not count votes cast outside the correct precinct. It was also in the top ten among states that did not have a statewide voter registration database. Provisional ballots accounted for 2.68% of the final vote, sixth in the nation. All of the states with higher percentages were also states that previously had provisional systems.

Provisional ballots in Kansas were widely distributed, going to first-time voters without ID, those not on registration rolls, voters who recently moved or changed names, challenged voters, and others. Provisional voters in Kansas who lacked ID were required to return to the polling place later with proper identification. After the ballots had been tallied, counties contacted provisional voters in their own way; there was no unified notification system across the state. Given the wide distribution of provisional ballots to a range of voters who give all appearances of proper registration, it is not surprising that Kansas had so many provisional ballots, nor is it unusual that such a high percentage were part of the final tally.

On the whole, questions of ID and provisional voting attracted little attention in Kansas, and for that matter, most of the Midwest is unconcerned with the issue. The lack of close presidential races in states like Kansas, Nebraska, and Oklahoma is a possible explanation of this unconcern.

Kentucky

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
1494	221	15.00	0.01

Kentucky's percent counted and the percentage of the final vote accounted for by provisional ballots both ranked near the bottom in the nation, fifth and sixth lowest respectively. For Kentucky, provisional balloting is a slight switch, as the state shifted away from an affidavit voting system after HAVA. Also after HAVA, the state created a statewide voter registration database. It chose not to count provisional ballots cast outside the correct precinct. The state's election website allowed voters to determine where the correct precinct was, also allowing voters to verify registration and gain information about provisional voting procedures.

Provisional ballots only went to the HAVA-mandated primary target, voters not on registration rolls. The statewide registration database meant that these voters were likely never registered, and the process' results back that conclusion. The state still used affidavits in the verification process, making its provisional balloting system similar to what was previously in place. The state informed voters about the status of their provisional ballots through a website.

Louisiana

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
5971	2411	40.00	0.12

The low number of provisional ballots and the relatively low percentage counted places Louisiana toward the middle of states with a statewide voter registration database. Provisional ballots made up .12% of the final vote in the state, slightly below the national median. The state's elections website located precincts and gave information about provisional voting, but it did not describe the state's photo ID requirement.

Provisional ballots went to those not on the rolls and to first-time voters without ID. Officials later verified these voters' date-of-birth and address to determine identity and vote status. After the counting ended, voters could call a phone number to find out if their vote counted.

The Secretary of State predicted before the election that most provisional votes would not be counted.[26] The election in New Orleans was characterized as a "catastrophe."[27] Problems mostly centered around inoperable voting machines, but there were also charges that poll workers told all first-time voters had to vote provisionally. These charges were raised by Louisiana Association of Community Organizations for Reform Now, ACORN, and the Election Protection Coalition.

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[26] McKeithen: most provisional ballots won't count, The Associated Press State & Local Wire, November 1, 2004, Monday, BC cycle, State and Regional, 644 words, By BRETT MARTEL, Associated Press Writer, NEW ORLEANS

[27] Nov. 2 N.O. election called 'catastrophe', New Orleans CityBusiness (New Orleans, LA), November 15, 2004 Monday, NEWS, 1091 words, Richard A. Webster

Maryland

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
48936	31860	65.00	1.33

The percent counted put the state almost exactly at the national average, though slightly below the average for states that had did not have registration databases and counted votes cast outside the correct precinct. Provisional balloting was not new to Maryland, further distinguishing it from the one-third of states that began the procedure in 2004. The state's elections website disseminated information about provisional voting and identification.

First-time voters without ID and those not on the rolls could vote provisionally. These voters were required to return later with ID for their vote to count. They could check the website or call a phone number to learn if their provisional ballot counted or not.

Massachusetts

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
10060	2319	23.00	0.08

The state had a voter registration database and did not count votes cast outside the correct precinct. 2004 was the state's first attempt at provisional balloting. The state's elections website provided information about provisional voting and gave voters the means to verify the location of precincts.

Massachusetts administers elections from the top-down. HAVA implementation is decided exclusively at the state level, removing counties completely from the process. This system is common throughout New England. Uniformly election administration increases consistency across the state. Provisional ballots went to voters whose names were not on registration rolls, though the database helped to limit the number somewhat. Provisional voters filled out an affidavit, whose information was later compared with the database. Voters could call a phone number to determine if their vote counted or not.

Massachusetts was one of the many states that did not have much public discussion about provisional voting.

Michigan

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
5610	3277	58.00	0.07

Michigan had the voter registration database that inspired the HAVA requirement, and it recently switched from affidavit balloting to provisional balloting in fail-safe situations. It did not count provisional ballots cast outside the correct precinct, surviving court challenges that sought to change the counting standards for the state.

Provisional voters were required to return to polling places later with ID and were notified by mail if their ballots counted or not. Michigan's system had two striking features, one of the nation's best databases and an outstanding website.

Michigan's voter registration database, known as the Qualified Voter File, was conceived in 1994, under Public Act 441, as an answer to the highly decentralized registration process in the state. Implemented in time for the 1998 midterm elections, the system was intended to serve five goals (as stated by Secretary of State Candice S. Miller):

- "The elimination of all duplicate voter registration records in the system.
- The streamlining of the state's voter registration cancellation process.
- The elimination of time-consuming record maintenance activities.
- The elimination of registration forwarding errors and duplicative tasks.
- Sizable cost gains on the local level."[28]

For comparison, Louisiana, despite a much smaller population and a similar database, had 5,971 ballots cast. Because local officials can more easily and accurately determine voter registration, the number of provisional ballots cast is lowered instantly. This database served as the model for the HAVA requirement of databases in each state and was awarded by the CalTech/MIT Voting Technology Project as the Best Practice in Managing Voter Registration.[29]

On September 5, 2002, Michigan unveiled its path-breaking Voter Information Center. This built upon previous efforts to create a statewide voter registration database, allowing the public to access voter registration information, precinct and polling locations, and other crucial election resources through a single source. By combining all of these features, the Michigan website allows voters to know that mail-in registration was received, to overcome the difficulties of locating the correct polling place, and to access information about races that are being decided in the election. Because of this central location for information, Michigan considers it acceptable to disqualify provisional ballots cast outside the correct precinct, assuming that voters should not have nearly as much difficulty determining their correct precinct as do those in other states.

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[28] See Candice S. Miller. "The Qualified Voter File: A Brief Introduction." At http://www.ncsl.org/programs/legman/elect/taskfc/appb.htm.

[29] http://www.vote.caltech.edu/media/documents/july01/Best_Practices.pdf

Mississippi

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
25,975	Not Reported	Cannot be known	Cannot be known

Mississippi did not report its provisional vote totals. Though the state has had public and contentious debates about voter ID requirements,[30] its provisional voting has flown beneath the radar. There has been no vocal Republican-Democratic split on the issue, as has been true with ID, nor has there been a similar Governor-Legislature clash. Instead, provisional voting in Mississippi has gone unnoticed, and its non-reporting of vital statistics has drawn no press. Rather, the state stands as a large blank spot in national coverage of the issue, and until numbers allow some insight into the process' successes and failures, we are unable even to speculate about what really happened on Election Day in Mississippi.

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[30] Special sessions appear to fuel dissension at Capitol; srb/stf/ew, The Associated Press State & Local Wire, November 22, 2004, Monday, BC cycle, State and Regional, 563 words, By SHELIA HARDWELL BYRD, Associated Press Writer

Missouri

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
8183	3292	40.00	0.12

Missouri did not have a statewide voter registration database, and it did not count provisional ballots cast in an incorrect precinct. It was using provisional ballots for the first time, complying with the newly established HAVA requirements. The state's election website provided information about provisional voting and voter ID requirements, though voters could not verify their registration status or easily locate their polling place.

Provisional ballots were given out to first-time voters who lacked ID (the state had a non-photo ID requirement) and to voters who were not on the registration rolls. After the provisional ballots had been cast, officials checked a voter's registration records to determine if the ballot should count. Voters could call a toll-free phone number to find out if his or her vote counted. Considering the state's percent counted, surprisingly low in a state without a database but in line with the correct precinct standard, most of the phone calls revealed that the ballot did not count in the final tally.

Accusations of vote fraud have lingered in Missouri – particularly concerning St. Louis - since the 2000 election, when several figures involved in the city's electoral administration were convicted of conspiracy to commit vote fraud.[31] These problems have created calls for electoral reform, particularly from Republican officials in the state.

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[31] VOTER RIGHTS AND VOTER FRAUD, St. Louis Post-Dispatch (Missouri), May 24, 2002 Friday Five Star Lift Edition, EDITORIAL; Pg. C18.

Montana

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
653	357	55.00	0.08

Montana used provisional voting only lightly. The state did not have a voter registration database, nor did it count votes cast outside the correct precinct. The state was using provisional ballots for the first time. Its elections website gave voters information about the state's ID requirements, though it did not provide precinct locations, give a mechanism for verifying registration status, nor provide information about the new provisional voting system.

Provisional ballots are given to voters who are not on the registration rolls, are challenged, or chose not to vote absentee despite applying for the ballots. County officials then verify the voter's registration, and the voter must bring ID later. After the verification process, the state informed voters by mail if their provisional ballots counted or not.

Montana has recently shifted to an Election Day registration system. This change aligns Montana with Wisconsin, Wyoming, Idaho, Maine, New Hampshire, and Minnesota. These EDR states have different approaches to provisional balloting. Idaho, New Hampshire, and Minnesota are exempt completely under Section 302(a)(5) of HAVA, while the other three allow provisional voting under some narrow circumstances but are still basically exempt. The federal government has not yet indicated into which category Montana will fall.

Nebraska

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
17003	13298	78.00	1.71

Nebraska's provisional ballots made up an unusually high percentage of the final vote for a state that disqualified provisional ballots cast in an incorrect precinct. The state also lacked a voter registration database, which tends to increase the number of ballots cast provisionally. The current system replaced an earlier limited provisional ballot system. Its elections website provided little information for voters, especially about provisional voting and ID requirements and did not offer information to verify registration or determine precinct locations.

Provisional ballots went to those who were not on the registration rolls. The high percentage counted implies that a great number of registration errors had been made by elections officials in the state, especially since votes in the wrong precinct were automatically disqualified. The state requires provisional voters to complete an affidavit which is verified in order to determine if a vote should count. Voters can check the status of their votes through either a website or a phone number.

Nevada

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
6154	2447	40.00	0.29

Nevada was new to provisional balloting, having no similar system before HAVA. The state lacked a registration database and did not count votes cast outside the correct precinct. Its elections website did not give easy access to information about the new provisional voting system or about the state's ID requirements. Similarly, voters could not verify their registration nor locate their precinct.

Provisional votes went to first-time voters without ID and to those not on registration rolls. These voters filled out an affidavit in order to cast a provisional ballot. The affidavit was later verified to determine if the ballot should be counted. Voters could either call a phone number or check the state's website to find out if their vote counted.

Nevada has passed election reform measures since November 2004, trying to correct public perceptions of a flawed process.[32] The state is trying to learn from its mistakes in its first attempt with provisional ballots. The new reforms hope to finish the creation of the HAVA-mandated database, decrease the number of provisional ballots via pre-emptive use of the database, and inject confidence into the counting process by clarifying verification procedures. The state has not emphasized questions of ballot security, arguing that the current system already did a good job sifting out those who were not actually registered. (In the case of Las Vegas, the problem was sorting out large numbers of out-of-state tourists who attempted to vote locally.)

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[32] Nevada committees take up election reform, The Associated Press State & Local Wire, May 5, 2005, Thursday, BC cycle, State and Regional, 636 words, By ELIZABETH WHITE, Associated Press Writer, CARSON CITY, Nev

New Jersey

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
64217	35485	55.26	1.96

The state was extending and revamping an earlier provisional system. It lacked a registration database and did not count ballots cast in an incorrect precinct. The state's elections website contained information on ID requirements and provisional voting, though it did not allow voters to verify registration or locate precincts.

Provisional ballots were given to first-time voters without ID and voters whose names were not on local registration rolls. Provisional voters brought ID later in order for their votes to count. After the counting process ended, voters could check a website or call a phone number in order to discover if their vote counted or not.

Complaints were reported in both Essex and Middlesex Counties, home to two of Rutgers University's campuses. Students argued that their registrations, completed in recent campus drives, had not been processed by elections officials in a timely manner, shunting many students to provisional ballots.[33] In response to these problems, some have called for Election Day Registration in New Jersey.[34] As of yet, EDR has not generated reform bills in the state legislature.

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[33] http://www.dailytargum.com/media/paper168/news/2004/11/19/Opinions/Importance.Of.Preparation-811402.shtml

[34] Dr. Frank Askin. "Let 'Em In and Get 'Em In: How to Give More People the Right -and the Reason- to Vote." New Jersey Policy Perspective. http://www.njpp.org/rpt_askin.html

New Mexico

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
15360	8767	57.00	1.16

New Mexico's percentage of ballots cast provisionally places it in the top third in the nation. The state counted votes cast outside the correct precinct, after changing its previous policy following a suit brought by Latino civil rights groups, most prominently the Mexican American Legal Defense and Education Fund.[35] The state had a voter registration database and was following in a previous tradition of provisional balloting. New Mexico's elections website explained the state's ID requirements and how provisional balloting worked, emphasizing how open the possibility was to voters who lacked other options.

Provisional ballots were offered to voters left off registration rolls and to first-time voters who could not meet the HAVA ID requirement. Provisional voters were required to bring ID later in order to verify their ballots. Voters could then call a phone number to discover if their ballot counted or not.

Since the election, the state has passed an important election reform bill.[36] This new act tightens up the state's ID requirements, requiring voters to either present a driver's license, a bank statement, or recite their name, date of birth, and last four digits of their social security number. Opponents of the legislation argued that it did not go far enough to insure ballot security. Supporters responded that the measure was sufficient to guarantee the integrity of the ballot without denying access to those less likely to be able to produce photo identification. This bill was passed in response to complaints about the counting of provisional ballots after the election. By front-loading the ID process, state elections officials hope to avoid future complaints by preempting possibilities of later partisan manipulation.

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[35] http://www.maldef.org/news/press.cfm?ID=238

[36] Gov. Signs Voting Standards Bill, Albuquerque Journal (New Mexico), April 7, 2005 Thursday, FINAL; Pg. C3, 424 words, Andy Lenderman Journal Politics Writer

New York

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
243450	98003	40.30	3.27

New Yorkers cast the second highest number of provisional ballots in the nation, though the percentage of the final vote only ranked fifth. The state did not have a voter registration database and did not count votes cast outside the correct precinct. New York was not new to provisional balloting, having had a fail-safe system before HAVA. The elections website provided little information to voters, especially about provisional voting possibilities and voter identification.

Provisional ballots went to first-time voters without ID, voters not on rolls, and those who had recently moved. These voters filled out affidavits that were later verified by elections officials. The verification rate was probably low because of the exclusion of votes cast in an incorrect precinct, a particular problem in New York City. With multiple polling places in a single large room, voting in an incorrect precinct was a common occurrence. The state website did not make it easy to verify precinct location. After the provisional votes were counted, voters received mail reporting if their provisional ballot counted.

New York's provisional ballots received extra attention in a state Senate race in Westchester County.[37] After months of litigation, the election was settled, but the attention to provisional ballots did not die away. Likely election reform to clarify verification rules and solve public outcry about the precinct requirement is imminent. Though proposals have not yet passed, New York is likely to change its election laws in response to the experience in 2004.

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[37] Three months after Election Day, Spano is sworn in again as senator, The Associated Press State & Local Wire, February 9, 2005, Wednesday, BC cycle, State and Regional, 724 words, By JOEL STASHENKO, Associated Press Writer

North Carolina

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
77469	42348	55.00	1.21

The state lacked a voter registration database, but it did count votes cast outside the correct precinct. Of course, legal developments since the November election make the above facts and figures somewhat debatable because of arguments about rules for counting provisional ballots. As the state struggled with the issue of counting out-of-precinct provisional ballots, the number counted listed above is open to revision. The state's elections website allowed voters to verify registration and locate precincts, although it did not disseminate information about provisional ballots or identification requirements.

North Carolina's electoral system was the subject of a major suit about how provisional ballots should be counted. The state's Supreme Court argued that pre-Election Day law required ballots cast in incorrect precincts be disqualified, while the state legislature demurred. The suit arose because a race fell within the margin of provisional ballots cast, allowing questions to be raised that would otherwise have been ignored given a larger margin of victory. The race in question was for the position of State Superintendent of Schools, a race was finally decided in favor of Democratic candidate June Atkinson.[38] The state legislature took the position that eventually secured Atkinson's victory by counting provisional ballots cast in an incorrect precinct[39], while the state Supreme Court backed the disqualification of those ballots.[40] This debate over separation of powers, the integrity of the electoral process, and the independence of the courts, raises questions about how robust the North Carolina system is. Simply put, the November election has two sides in North Carolina, and neither can even agree on what happened, let alone how it should be interpreted. In a state where the counting of provisional ballots is widely reported to have varied from jurisdiction to jurisdiction, the resulting unequal and fraud-ridden election should not be any surprise.

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[38] http://www.nytimes.com/2005/08/24/national/24carolina.html?adxnnl=1&adxnnlx=1125328715-oGB1b2+9CWCrlhmQLv6F+Q

[39] Fletcher shifts focus to Legislature in election dispute, The Associated Press State & Local Wire, May 11, 2005, Wednesday, BC cycle, State and Regional, 452 words, By GARY D. ROBERTSON, Associated Press Writer, RALEIGH, N.C.

[40] N.C. appeals court denies Fletcher stay in schools chief race, The Associated Press State & Local Wire, May 11, 2005, Wednesday, BC cycle, State and Regional, 358 words, By GARY D. ROBERTSON, Associated Press Writer, RALEIGH, N.C.

Ohio

PB Cast	PB Counted	Percent Counted	Provisional Vote/Total Vote
158,642	123,548	78%	2.2%

Ohio did not have a statewide voter registration database, and --after several court tests-- did not count ballots cast outside the voter's assigned precinct. The state adopted a new provisional voting system after the passage of HAVA to replace its previously limited provisional system. Its elections website provided information about provisional balloting and ID requirements, information circulated heavily by third-parties in get-out-the-vote efforts in this most contentious of battleground states.

Provisional ballots in Ohio went to voters whose names did not appear on registration rolls. These ballots were verified by county elections officials checking registration records to see if the voter was ever actually registered. Voters were able to call a phone number in order to determine if their ballots were counted.

The vote in Ohio was the subject of much litigation. Before the election, litigation challenged procedures for counting provisional ballots cast outside the correct precinct and the status of poll observers. Hanging over all of this was the lingering shadow of *Bush v. Gore* and its holding that states must have uniform counting procedures. In the critical case of *Sandusky County Democratic Party v. Blackwell*, a federal circuit court ruled that voters could cast a provisional ballot in an incorrect precinct, but the ballot did not have to be counted.[41] The court heavily deferred to state prerogatives to determined what constituted an eligible ballot in that state. This provided the basis for the position already advocated by Secretary of State Kenneth Blackwell, the plaintiff, who opposed counting provisional ballots cast in an improper precinct. HE was also the subject of other controversy because of his close ties to the Bush campaign. Since the election, the League of Women Voters has filed a suit that seeks changes in the state's electoral machinery. As a result of the controversies and scrutiny in 2004, Ohio is likely to experience changes in its elections procedures, but the nature of those changes is still unclear.

Ohio was the target of accusations of vote fraud from the right and voter suppression from the left. The American Center for Voting Rights released a report alleging voter fraud in Cleveland and Columbus, the two most Democratic urban centers in the state.[42] At the same time the Democratic Party released a report arguing that inequities in the distribution of voting machines and other problems put "democracy at risk."[43] Despite the allegations, the controversy has so far been limited to an exchange of charges and suspicions that has lacked conclusive evidence.

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[41] *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004)

[42] http://www.ac4vr.com/reports/072005/default.html

[43] http://a9.g.akamai.net/7/9/8082/v001/www.democrats.org/pdfs/ohvrireport/fullreport.pdf

Oklahoma

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
2615	201	8.00	0.01

Oklahoma counted provisional ballots at the third lowest rate in the nation. These ballots constituted a low enough percentage of the final vote to place the state in the bottom ten nationally. Oklahoma has a voter registration database, and it did not count votes cast outside the correct precinct. The state was new to provisional balloting in 2004. The elections website provided information only about the state's ID requirements, not helping voters verify registration status, locate precincts, nor did it explain the details of the new system of provisional voting.

Provisional ballots were given to first-time voters without proper ID and people not on local registration rolls. The state's database helped keep the latter group to a minimum. After the ballots were cast, elections officials verified registration status using the database, and voters can call a phone number to learn if their ballot counted. The preemptive usage of the database probably means that most callers, because they were never really registered, would have discovered that their provisional ballots did not contribute to the final tally.

Oregon

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
8298	7077	85.00	0.39

Provisional votes were tallied at the second highest percentage in the nation. Oregon lacked a registration database, but it did count votes cast outside the correct precinct. The Oregon system continued its earlier versions of provisional voting.

Provisional ballots in Oregon are unusual because the state uses an all-mail voting system. Provisional ballots, then, are even more of an exception in the state than they are elsewhere. Laws in Oregon open provisional voting up widely, allowing first-time voters without ID, challenged voters, voters not on the rolls, voters who applied for absentee ballots, and others to vote provisionally. Voters must go to the county elections office in order to cast a provisional ballot. Verification involved a simple signature comparison between ballot envelopes and records. Voters learned by calling a phone number if their vote counted.

Oregon is an interesting example of provisional ballots in an uncommon electoral environment. With an all-mail voting system, the need for fail-safe forms of voting seems less likely; after all, voters are already able to avoid problems with finding the correct polling place and the ability to cast a ballot without being on a particular polling place's registration roll. But in the end, a state dependent on the mail, and the attendant problems of voters losing ballots, needs more than most a "fail-safe" outlet. Provisional voting in Oregon suffices to cover a great host of voting sins by allowing voters to correct their mistakes on Election Day.

Pennsylvania

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
53698	26092	49.00	0.45

The state had some failed attempts with a voter registration database that are discussed below, attempts that both increased the numbers of ballots cast provisionally while decreasing the number counted. The state did count votes cast outside the correct precinct. Pennsylvania, as its struggles with the implementation of HAVA made clear, was new to fail-safe voting after the passage of HAVA. The state's election website did provide information about the new system, and it provided information about the state's ID requirements, which were only the HAVA minimums.

Pennsylvania voters were given provisional votes if their names were not on registration rolls, though the state's database was supposed to fix this problem. Its failure in the election has led to broad calls for reform since the election, and it increased provisional vote totals in the state. It also probably decreased turnout in Philadelphia where the system had its biggest problems, making the entire voting process in the city slower than in other regions of the state. But nonetheless, if provisional voters were able to vote, officials would verify their registration by comparing the envelope's information with the state's database. Voters could call a phone number to find out if their vote counted.

Pennsylvania began its push toward a statewide voter registration database in 2001. In June 2001, the Statewide Uniform Registry of Electors (SURE) was passed in reaction to the Florida controversy of 2000. Pennsylvania had its own election problems in 2000, as its implementation of motor voter statutes confused voters while depressing registration and turnout. In January 2002, the new governor, Mark Schweiker, signed a law that specifically implemented the database portion of the earlier election reform package signed into law by Tom Ridge. On July 24, 2002, the Department of State awarded the contract to create the database to Accenture, Ltd., hoping to link registration in all 67 counties by the following fall. All of this activity led many in the state to believe they were "ahead of the curve," as Secretary of State C. Michael Weaver said before a legislative panel in October 2002. But the system proceeded to fall apart.

The system was slow and ineffective, with glitches that undermined its performance.[44] The key problem with the system has been the integration of large urban areas into the statewide database. Philadelphia generates enough registration traffic that it freezes up the system, making it inefficient both there and for all other counties at the same time. On January 26, 2005, following the system's abysmal performance in the 2004 election, 33 eastern Pennsylvania county election offices petitioned the state to end the contract with Accenture, hoping that a different company could correct the problems generated by SURE.[45] The program was faulty enough that 11 counties had already been granted a reprieve from using it until the errors in the system were corrected. These concerns were raised again on February 1, 2005, when county officials publicly objected

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[44] http://www.votersunite.org/article.asp?id=2657

[45] Pamela Lehman. "Counties want state to scrap voter registry; Lehigh, Northampton among those protesting SURE as slow and difficult." The Morning Call, Inc. Morning Call (Allentown, Pennsylvania) January 26, 2005.

to the system at Gov. Ed Rendell's Election Reform Task Force meeting, calling for a new company to complete the system before January 1, 2006.

Rhode Island

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
2147	984	46.00	0.23

The Provisional Vote/Total Vote in Rhode Island is slightly below the median nationwide as is the overall percent counted. The state counted votes cast outside the correct precinct but lacked a registration database. Counting outside the precinct makes the state's percent counted look lower comparatively, though it remains near the median for states without a database. The state was new to provisional balloting. Its elections website gave information about ID requirements and provisional voting, though it did not help with registration verification or precinct location.

Voters whose names were not on the rolls received provisional ballots. After the election, state officials checked the information on the provisional ballot with registration records in order to verify the voter's status. After this process ran its course, voters could check the state's website to discover if their provisional ballot was counted in the final tally. Slightly less than half of the time, the answer was yes.

While this may sound redundant, Rhode Island exhibits all of the hallmarks of New England, excepting the Election Day Registration states of Maine and New Hampshire. Election administration is centralized at the state level. Counties are cut out of the process, while towns and cities administer the nuts and bolts of Election Day itself.

South Carolina

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
4930	3207	65.00	0.20

The state had a voter registration database, and it disqualified provisional ballots cast in an incorrect precinct. The state was not new to provisional balloting, instead building on a previous system. The state's election website allowed voters to verify their registration status, get information about provisional ballots, and know the state's ID requirements (strict photo ID, often described as the strictest in the nation.)[46] The website did not help voters locate their precinct, a problem in a state that disqualified provisional ballots for being cast in an improper location.

Provisional voters in the state were chiefly peoples whose names were not on registration rolls. After casting a ballot, officials verified the voter's registration status using the state's database. Then a voter was able to check the state's website to see if his or her vote counted in the election. In South Carolina, these voters would have seen their votes collectively counted at almost exactly the rate of the national average.

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[46] For example, see http://www.jsonline.com/news/state/apr05/322607.asp. Recent legal changes in Indiana and Georgia have increased the number of states with similar photo ID laws.

South Dakota

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
533	66	12.00	0.02

South Dakota was new to provisional balloting, but it did have a voter registration database. It did not count ballots cast outside the correct precinct, and among such states it had the third lowest percent counted. The state's elections website helped voters find their precinct and gave information about provisional voting, though it did not discuss the state's photo ID requirement.

Most provisional ballots went to voters whose names were not on local registration rolls. The existence of a database probably contributed to why these voters ended up having votes that did not count, as they were most likely not registered in the first place. Provisional voters filled out an affidavit, which was verified against the state's database. Voters were sent letters explaining whether their provisional ballot had counted or not. Most of these letters indicated that the vote did not count.

South Dakota's voter ID laws generated some controversy, with lawmakers arguing that they kept Native Americans from voting.[47] These complaints were turned into bills, some to repeal the requirement entirely and others to exempt those living on the state's large reservations. These bills did not pass before the 2004 election.

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[47] Lawmakers asked to repeal voter identification law, The Associated Press State & Local Wire, July 15, 2004, Thursday, BC cycle, State and Regional, 862 words, By CHET BROKAW, Associated Press Writer, PIERRE, S.D.

Tennessee

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
8778	3298	38.00	0.14

The state lacked a registration database and did not count ballots cast outside the correct precinct. It was new to provisional balloting, having no such system prior to the implementation of HAVA. The state's elections website provided little information to voters, not informing them of the possibilities of provisional voting, the state's ID requirements, the location of precincts, nor the voter's registration status.

Provisional ballots were widely distributed, going to those in the hospital, first-time voters without ID, those not on registration rolls, and others. These voters filled out an affidavit as to their identity and registration status, and these affidavits were verified with registration records to determine their veracity. After the verification process concluded, Tennessee voters received a letter informing them of whether or not their vote had been counted.

Texas

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
36193	7770	21.00	0.10

Texas modified a previous affidavit balloting system to comply with HAVA's requirements of a more complete provisional voting system. The new system, however, still used affidavits. The state did not have a registration database, nor did it count provisional ballots cast outside the correct precinct. The disqualification of ballots cast in the wrong precinct was a critical factor in lowering the percent counted in the state. Its elections website disseminated information about ID requirements and provisional voting, but the lack of database made it impossible to verify registration or precinct location.

Provisional ballots went to voters who were not on registration rolls or voted for the first time but lacked ID. These voters filled out an affidavit as to their identity and registration status, which was later cross-checked by officials with registration records. After this process played out, voters were notified by mail if their vote had counted or not.

Texas has several large urban areas: seven among the fifty largest cities in the country are in the state. But only thirteen of the top fifty cities have registration databases, meaning we are uncertain of the impact of databases on large urban areas. We know that the Pennsylvania database failed in Philadelphia, the nation's fifth largest city, because of the large number of changes being made right up to Election Day. But adding a database to Texas will have an unknown effect on the electoral process. The state already has remarkably low numbers of provisional votes.

Utah

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
26389	18575	70.00	2.00

Both percentages reported above are greater than the national average. The state lacked a voter registration database, and it counted provisional votes cast outside the correct precinct. The combination of these two factors make it understandable why Utah's amount of provisional ballots and rate of counting was higher than would otherwise be expected, using averages to inform our expectations. Utah was new to provisional balloting, beginning the system only after the passage of HAVA. The state's elections website was well-prepared to disseminate information about the changes to the system, providing information on provisional voting, ID requirements, and the location of precincts.

People not on local registration rolls were eligible to receive provisional ballots. After casting provisional ballots, voters had to return later with necessary ID. This ID was used in the verification process, after which voters could call a phone number in order to find out if their vote had counted. The notification system will change before the next election, by which time Utah plans to convert to a website.

The presidential election in Utah was not close, and it generated little electoral controversy.

Vermont

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
101	37	37.00	0.01

The state lacked a statewide voter registration database, and it counted provisional ballots cast in an incorrect precinct. Vermont was new to provisional balloting in the 2004 election. Its elections website provided voters with information about the state's ID requirements and provisional voting, along with having a mechanism that enables voters to find their precinct on Election Day.

Voters whose names were not on local registration rolls could vote provisionally. Provisional voters in Vermont signed an affidavit attesting to their identity and registration status. These affidavits were compared with registration records to determine which votes to count and which to disqualify. Voters could then call a phone number to learn whether their provisional ballot made up part of the final vote tally.

Vermont falls into the New England system of top-down election administration, which removes variance from HAVA implementation. In Vermont, this system reduced the number of provisional voters dramatically, quite an achievement for a state without a database. But its percent counted was in the bottom quarter for such states, making Vermont an unusual example that combines few votes with few counted.

Virginia

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
4172	728	17.00	0.02

Virginia did not have a voter registration database, nor did it count provisional ballots cast in improper precincts. Its percent counted was next to last among states without a voting database and in the lowest quarter among those who disqualified provisional ballots cast in an improper precinct. Virginia in 2004 was not new to provisional balloting, already having a system prior to the passage of HAVA. The state's elections website disseminated information about provisional voting, ID requirements, and the location of precincts.

Virginia gave out provisional ballots to first-time voters without ID and those whose names were not on local registration rolls. These voters submitted an affidavit, later verified by elections officials. After the verification process, voters could call a phone number to see if their provisional ballot was counted.

Since the election, allegations of vote fraud surfaced in southwestern Virginia. Specifically, the former mayor of Gate City, population slightly over 2,000, has been indicted on 37 counts of vote fraud.[48] He is accused of using absentee ballots to perpetrate his fraud and get himself elected. In this case, ID requirements would be ineffective in preventing this form of fraud.

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[48] Laurence Hammack. "State charges former mayor with vote fraud." The Roanoke Times. August 2, 2005.

Washington

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
87393	69645	80.00	2.44

Washington lacked a registration database, and it counted provisional ballots cast outside the correct precinct. Though Washington was not new to provisional voting, the process generated a massive amount of controversy across the state, setting up multiple controversial recounts in the gubernatorial race.[49] The state's elections website explained ID requirements, though it did not discuss provisional voting.

Washington voters could easily obtain provisional ballots, for reasons varying from hospitalization to absence from local rolls. Official procedure called for verification by comparing the information on the provisional envelope with registration records. Notification was left up to counties. But as future lawsuits clarified, official verification procedure was not always followed.

King County, home of Seattle, had poll workers mistakenly run provisional ballots through voting machines as if they were regular ballots, skipping the verification stage.[50] The problem was so severe that the Election Commissioner for the county stated that we "may never know the number of illegal ballots." This problem, and other accusations of vote fraud, were appealed to numerous state courts by eventual loser Dino Rossi. While the judge allowed for a wide range of possible accusations,[51] in the end there was no justiciable solution to electoral problems.[52]

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[49] Judge rules for Democrats, allows provisional ballot count, The Associated Press State & Local Wire, November 16, 2004, Tuesday, BC cycle, State and Regional, 550 words, SEATTLE

[50] Logan: King County may never know number of illegal ballots, The Associated Press State & Local Wire, April 26, 2005, Tuesday, BC cycle, State and Regional, 818 words, By REBECCA COOK, Associated Press Writer, OLYMPIA, Wash.

[51] Judge allows "proportional analysis" method in election challenge, The Associated Press State & Local Wire, May 2, 2005, Monday, BC cycle, State and Regional, 888 words, By REBECCA COOK, Associated Press Writer, WENATCHEE, Wash

[52] *Borders v. King County*

West Virginia

PB Cast	PB Counted	Percent counted	Provisional Vote/Total Vote
13367	8378	63.00	1.11

West Virginia had a registration database, and it did not count provisional ballots cast outside the correct precinct. The state was continuing its previous provisional system from before the passage of HAVA. The state's elections website gave information about provisional balloting but little else.

West Virginia, like Washington, widely distributed provisional ballots. These were counted by comparison to official records to verify the information given by the voter. Voters could call a phone number to discover the status of their provisional ballot.

Works Consulted (Sorted by State and Date)

Alabama:

Alabama Provisional Ballots

1. Birmingham News (Alabama), November 13, 2004 Saturday, LOCAL NEWS; Pg. 11A, 301 words, JEFFCO ELECTION OFFICIALS REJECT 84% OF PROVISIONAL BALLOTS, ERIC VELASCO, News staff writer

3. The Associated Press State & Local Wire, November 10, 2004, Wednesday, BC cycle, State and Regional, 649 words, Counties vary in handling of provisional ballots across Alabama; stfjr/kw, By JAY REEVES, Associated Press Writer, BIRMINGHAM, Ala.

4. The Associated Press State & Local Wire, November 9, 2004, Tuesday, BC cycle, State and Regional, 510 words, Thousands of Alabama votes thrown out as provisional tally begins; stfjr/kw, By JAY REEVES, Associated Press Writer, BIRMINGHAM, Ala.

5. The Associated Press State & Local Wire, November 5, 2004, Friday, BC cycle, State and Regional, 538 words, Provisional count next week could determine Amendment 2, By JAY REEVES, Associated Press Writer, BIRMINGHAM, Ala.

6. The Associated Press State & Local Wire, October 25, 2004, Monday, BC cycle, State and Regional, 219 words, Few provisional ballots expected in Nov. 2 election; stfjr/kw, BIRMINGHAM, Ala.

7. Birmingham News (Alabama), October 24, 2004 Sunday, NEWS, 388 words, METRO BRIEFS

8. Birmingham News (Alabama), October 23, 2004 Saturday, NEWS, 1041 words, BRIEFS

Alaska:

No news stories found through Lexis-Nexis in local newspapers.

Alaska had 7.2% of all votes through provisional ballots and counted 97% of provisional ballots cast, both highest in the nation. (Washington Post, March 19, 2005, Page A08) To view the entire article, go to http://www.washingtonpost.com/wp-dyn/articles/A48547-2005Mar18.html?referrer=emailarticle

Arizona:

Arizona Provisional Ballots

4. The Associated Press State & Local Wire, April 1, 2005, Friday, BC cycle, State and Regional, 625 words, Napolitano vetoes bill to implement Prop 200 voting ID mandate, By PAUL DAVENPORT, Associated Press Writer, PHOENIX

6. The Associated Press State & Local Wire, February 10, 2005, Thursday, BC cycle, State and Regional, 465 words, Arizona AG delays voting provision of anti-illegal migrant law, By ANABELLE GARAY, Associated Press Writer, PHOENIX

7. The Associated Press State & Local Wire, January 29, 2005, Saturday, BC cycle, State and Regional, 160 words, Nearly 28,000 Arizonans had their provisional votes thrown out in 2004 election, TUCSON, Ariz.

9. The Associated Press State & Local Wire, November 6, 2004, Saturday, BC cycle, State and Regional, 219 words, Hispanic organization fighting provisional ballot issue, PHOENIX

11. The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, Political News, 713 words, A voter's guide to issues in the Election Day process, PHOENIX

12. The Associated Press State & Local Wire, September 9, 2004, Thursday, BC cycle, Political News, 147 words, 2 races still undecided with at least 4,700 uncounted ballots, TUCSON, Ariz.

13. The Associated Press State & Local Wire, August 26, 2004, Thursday, BC cycle, State and Regional, 171 words, 2 groups sending poll monitors to Arizona to aid minority voters, TUCSON, Ariz.

Arkansas:

Arkansas Provisional Ballots

2. Prosecutor: No basis to pursue voting claim, Arkansas Democrat-Gazette (Little Rock), December 17, 2004 Friday, ARKANSAS, 358 words, BY MICHAEL R. WICKLINE ARKANSAS DEMOCRAT-GAZETTE

19. Many provisional ballots cast unnecessarily in state, Arkansas Democrat-Gazette (Little Rock), November 4, 2004 Thursday, NORTHWEST ARKANSAS, 416 words, BY CHARLIE FRAGO ARKANSAS DEMOCRAT-GAZETTE

21. Provisional ballots provide bump in otherwise smooth voting in state, Arkansas Democrat-Gazette (Little Rock), November 3, 2004 Wednesday, ARKANSAS, 1396 words, BY CHARLIE FRAGO ARKANSAS DEMOCRAT-GAZETTE

29. What happens if my vote is challenged, The Associated Press State & Local Wire, November 1, 2004, Monday, BC cycle, State and Regional; Political News, 433 words, By The Associated Press

31. Trouble brewing over provisional ballots, some say, Arkansas Democrat-Gazette (Little Rock), October 31, 2004 Sunday, FRONT SECTION, 773 words, BY MARK MINTON ARKANSAS DEMOCRAT-GAZETTE

34. Things to know about voting in Arkansas, The Associated Press State & Local Wire, October 30, 2004, Saturday, BC cycle, State and Regional; Political News, 109 words, LITTLE ROCK

36. Election day guidelines for Arkansas voters, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, State and Regional, 242 words, LITTLE ROCK

38. Scrutiny and uncertainty: An Arkansas primer on voting, The Associated Press State & Local Wire, October 27, 2004, Wednesday, BC cycle, State and Regional; Political News, 716 words, By DAVID HAMMER, Associated Press Writer, LITTLE ROCK

46. Polls to get provisional ballots by next week, Arkansas Democrat-Gazette (Little Rock), October 21, 2004 Thursday, ARKANSAS, 791 words, BY CHARLIE FRAGO ARKANSAS DEMOCRAT-GAZETTE

50. What Arkansas Code 7-5-305 says, Arkansas Democrat-Gazette (Little Rock), October 20, 2004 Wednesday, ARKANSAS, 551 words

51. First lady right to seek voter ID, but not 'force it', Arkansas Democrat-Gazette (Little Rock), October 20, 2004 Wednesday, NORTHWEST ARKANSAS, 1223 words, BY AUSTIN GELDER AND CHARLIE FRAGO ARKANSAS DEMOCRAT-GAZETTE

52. Pulaski County without provisional ballots, The Associated Press State & Local Wire, October 20, 2004, Wednesday, BC cycle, State and Regional, 570 words, By JAMES JEFFERSON, Associated Press Writer, LITTLE ROCK

California:

California Provisional Ballots

29. Problems at polls alienate workers, Inland Valley Daily Bulletin (Ontario, CA), November 6, 2004 Saturday, NEWS, 937 words, By SARA A. CARTER, STAFF WRITER

3. Horn cites border fence in wide-ranging speech; State of N. County address pulls in 150, The San Diego Union-Tribune, March 4, 2005 Friday, ZONE; Pg. NC-3; NI-3, 327 words, Daniel J. Chacon, STAFF WRITER, VALLEY CENTER

73. Lawyers spent Election Day on the job, The Recorder, November 4, 2004, Thursday, NEWS; Pg. 1, 1484 words, By Pam Smith and Jeff Chorney

Colorado:

Colorado Provisional Ballots

3. EDITORIAL Boost for election credibility, The Denver Post, June 12, 2005 Sunday, FINAL EDITION, PERSPECTIVE; Pg. E-06, 271 words

4. Election reforms on books Owens signs two measures born of issues in November vote One of the new laws requires standardized training of election officials; the second addresses ``provisional" ballots., The Denver Post, June 9, 2005 Thursday, FINAL EDITION, DENVER & THE WEST; Pg. B-02, 305 words, Susan Greene Denver Post Staff Writer

12. Hundreds in Colorado investigated for voter fraud, The Associated Press State & Local Wire, March 24, 2005, Thursday, BC cycle, State and Regional, 553 words, DENVER

19. Lawmakers urged to fix voting problems, The Associated Press State & Local Wire, January 19, 2005, Wednesday, BC cycle, State and Regional, 421 words, By STEVEN K. PAULSON, Associated Press Writer, DENVER

26. Seventy-five percent of provisional ballots counted, The Associated Press State & Local Wire, December 23, 2004, Thursday, BC cycle, State and Regional, 582 words, By P. SOLOMON BANDA, Associated Press Writer, DENVER

33. UNREGISTERED VOTERS TALLIED; OF PROVISIONAL BALLOTS REJECTED, 55% DIDN'T SHOW UP ON RECORDS, Rocky Mountain News (Denver, CO), November 19, 2004 Friday Final Edition, NEWS; Pg. 6A, 762 words, Gabrielle Crist, Rocky Mountain News

40. Provisional votes faced higher bar, The Denver Post, November 17, 2004 Wednesday, FINAL EDITION, A SECTION; Pg. A-01, 1048 words, Erin Cox and Susan Greene Denver Post Staff Writers

41. 80% OF DENVER PROVISIONAL BALLOTS WILL BE COUNTED, Rocky Mountain News (Denver, CO), November 17, 2004 Wednesday Final Edition, NEWS; Pg. 6A, 280 words, Gabrielle Crist, Rocky Mountain News

47. Colo. activists also ``suspicious," analyzing vote, The Denver Post, November 12, 2004 Friday, FINAL EDITION, A SECTION; Pg. A-11, 230 words, Mike Soraghan Denver Post staff writer

75. AT THE POLLS Provisional-ballot questions dominate voting controversies, The Denver Post, November 3, 2004 Wednesday, FINAL EDITION, DENVER & THE WEST; Pg. B-01, 696 words, Chuck Plunkett Denver Post Staff Writer

90. Colorado election largely smooth; scattered problems reported, The Associated Press State & Local Wire, November 2, 2004, Tuesday, BC cycle, Political News, 704 words, By JON SARCHE, Associated Press Writer, DENVER

98. MANY COLORADO VOTERS FEAR FRAUD; ELECTION CONFIDENCE SHAKY, POLL SHOWS, Rocky Mountain News (Denver, CO), November 1, 2004 Monday Final Edition, NEWS; Pg. 4A, 847 words, Charlie Brennan, © 2004, Rocky Mountain News

102. Election becomes a test of TRUST Will your vote count? After weeks of missteps, will Colorado get it right? To be answered Tuesday., The Denver Post, October 31, 2004 Sunday, FINAL EDITION, A SECTION; Pg. A-01, 1475 words, Susan Greene and Erin Cox Denver Post Staff Writers

150. State officials try to reassure voters of a clean election, The Associated Press State & Local Wire, October 18, 2004, Monday, BC cycle, Political News, 731 words, By STEVEN K. PAULSON, Associated Press Writer, DENVER

175. Fraud, provisionals, electoral college - a perfect storm brewing in Colorado?, The Associated Press State & Local Wire, October 14, 2004, Thursday, BC cycle, Political News, 923 words, By JON SARCHE, Associated Press Writer, DENVER

202. Your right to vote is in peril, The Denver Post, October 8, 2004 Friday, FINAL EDITION, DENVER & THE WEST; Pg. B-01, 650 words, Jim Spencer Denver Post Staff Columnist

268. Guarding democracy at the polls, The Denver Post, August 11, 2004 Wednesday, FINAL EDITION, DENVER & THE WEST; Pg. B-01, 622 words, Jim Spencer

Connecticut:

Connecticut Provisional Ballots

4. Still in court, Westchester Senate race not aging gracefully, The Associated Press State & Local Wire, February 6, 2005, Sunday, BC cycle, State and Regional, 837 words, By JIM FITZGERALD, Associated Press Writer, WHITE PLAINS, N.Y.

9. Rare protest to electoral vote count, Connecticut Post (Bridgeport, CT), January 9, 2005 Sunday, PETER URBAN, 1046 words

23. Patience required with provisional, presidential balloting, Connecticut Post (Bridgeport, CT), November 4, 2004 Thursday, LOCAL/REGIONAL NEWS, 727 words, BILL CUMMINGS and MEG BARONE, Staff writers

32. Provisional ballots to be available in state, Connecticut Post (Bridgeport, CT), October 31, 2004 Sunday, LOCAL/REGIONAL NEWS, 718 words, EDWARD J. CROWDER

Delaware:

Delaware Provisional Voting

1. A guide to voting in Delaware, The Associated Press State & Local Wire, October 30, 2004, Saturday, BC cycle, Political News, 562 words, By The Associated Press

District of Columbia:

District of Columbia Provisional Voting

No articles specifically on voting within the district.

Florida:

http://www.sptimes.com/2004/10/19/State/High_court_clarifies_.shtml

Advocacy organizations continue to object to the resolution of this litigation. See www.aclu.org/Files/getFile.cfm?id=16802

3. IN FLORIDA, PROVISIONAL BALLOTS FUTILE FOR MOST WHO CAST THEM, Palm Beach Post (Florida), November 10, 2004 Wednesday, MARTIN-ST. LUCIE EDITION, LOCAL; Pg. 3C, 622 words, By JANE MUSGRAVE Palm Beach Post Staff Writer

22. Untangling the ballots; Canvassing board performs a tough and necessary task, Sarasota Herald-Tribune (Florida), November 5, 2004 Friday, ALL EDITION, A SECTION; Pg. A16, 265 words

30. Two of five provisional ballots ruled valid, St. Petersburg Times (Florida), November 5, 2004 Friday, CITRUS TIMES; Pg. 4, 293 words, AMY WIMMER SCHWARB, INVERNESS

49. Election imperfect, but improved, St. Petersburg Times (Florida), November 4, 2004 Thursday 0 South Pinellas Edition Correction Appended, CITY & STATE; Pg. 1B, 918 words, DAVID KARP; TAMARA LUSH; MATTHEW WAITE

96. To The Polls, With A Few More Twists, Tampa Tribune (Florida), November 2, 2004 Tuesday, FINAL EDITION, NATION/WORLD; Pg. 1, 924 words, WILLIAM MARCH, TAMPA

113. Provisional ballots cast doubt on vote; Election law experts say a fix for a problem in 2000 looks like more trouble., Florida Times-Union (Jacksonville), October 30, 2004 Saturday, City Edition, METRO; Pg. B-3, 565 words, DAVID DECAMP, The Times-Union

120. A voter's guide for casting ballots in Florida, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, Political News, 684 words, TALLAHASSEE, Fla.

Georgia:

Georgia Provisional Ballots

7. GOP backs down, a bit, on photo ID requirement for voters, The Associated Press State & Local Wire, March 21, 2005, Monday, BC cycle, State and Regional, 380 words, By KRISTEN WYATT, Associated Press Writer, ATLANTA

9. OUR OPINIONS: Vote 'no' on photo IDs; Proposed state election reform is discriminatory and may not reduce the opportunities for fraud, The Atlanta Journal-Constitution, March 21, 2005 Monday, Home Edition, Pg. 8A;, 492 words

11. LEGISLATURE '05: Lawsuits likely over vote ID bill, The Atlanta Journal-Constitution, March 16, 2005 Wednesday, Home Edition, Pg. 1B;, 538 words, NANCY BADERTSCHER, CARLOS CAMPOS

23. One-third of provisional votes counted, The Atlanta Journal-Constitution, November 13, 2004 Saturday, Home Edition, Pg. 4B, 551 words, CARLOS CAMPOS

31. ELECTIONS BOARD REJECTS 52 PAINE COLLEGE VOTERS, The Augusta Chronicle (Georgia), November 5, 2004 Friday, FINAL EDITION, METRO; Pg. B05, 309 words, By Tom Corwin Staff Writer

56. STEALING THE ELECTION?, The Augusta Chronicle (Georgia), October 24, 2004 Sunday, ALL EDITION, EDITORIAL; Pg. A04, 392 words

62. FAIL-SAFE VOTING SYSTEM BEGINS, The Augusta Chronicle (Georgia), October 20, 2004 Wednesday, ALL EDITION, NEWS; Pg. A11, 540 words, By Kate Lewis Staff Writer

Hawaii:

Hawaii Provisional Ballots

1. Things to know when you go to vote, The Associated Press State & Local Wire, October 30, 2004, Saturday, BC cycle, Political News, 562 words, By The Associated Press

Honolulu County Election Incidents
https://voteprotect.org/index.php?display=EIRMapCounty&state=Hawaii&county=Honolulu&cat=ALL&tab=ALL

Idaho:

Idaho Provisional Ballots and Voter ID

Idaho does not have provisional ballots.

No coverage of local issues, but a lot of focus on problems in Washington. Also, some attention to bills to stiffen ID requirements in Georgia, Texas, South Dakota, Wisconsin, Mississippi, and New Mexico.

Illinois:

Illinois Provisional Ballots

10. Provisional ballots may affect district budgets, Chicago Daily Herald, February 1, 2005 Tuesday, Lake Edition, NEWS; Pg. 1, 425 words, C. L. Waller, Daily Herald Staff Writer

18. Daily Editorials Better democracy, Copley News Service, December 30, 2004Thursday, EDITS; EDITORIAL WEEKLY FEATURE, 529 words, The San Diego Union-Tribune Copley News Service

23. Defeated state lawmaker seeks recount, alleges voting irregularities, The Associated Press State & Local Wire, November 30, 2004, Tuesday, BC cycle, State and Regional, 486 words, By JAN DENNIS, Associated Press Writer, PEORIA, Ill.

28. Ballot fix after Election Day comes too late, Copley News Service, November 24, 2004 Wednesday, ILLINOIS SPOTLIGHT, 689 words, Pam Adams Copley News Service

29. Faulty registrations get provisional votes tossed, Chicago Sun-Times, November 22, 2004 Monday, NEWS; Pg. 21, 366 words, STEVE PATTERSON

37. Thousands of provisional ballots didn't count in Illinois, The Associated Press State & Local Wire, November 17, 2004, Wednesday, BC cycle, State and Regional, 772 words, By MAURA KELLY LANNAN, Associated Press Writer, CHICAGO

49. Daily Editorials Revise laws to protect the integrity of the vote, Copley News Service, November 5, 2004 Friday, EDITS; EDITORIAL WEEKLY FEATURE, 407 words, The Detroit News Copley News Service

50. Despite smooth voting Tuesday, experts press for more reforms, Copley News Service, November 5, 2004 Friday, WASHINGTON WIRE, 941 words, Toby Eckert Copley News Service, WASHINGTON

56. Close presidential election brings 'provisional ballots' to America's attention, Chicago Tribune, November 4, 2004, Thursday, TB-BALLOTS-20041104, 566 words, By John McCormick

73. Election officials expect high turnout, worry about provisional ballots, The Associated Press State & Local Wire, November 2, 2004, Tuesday, BC cycle, Political News, 531 words, By MAURA KELLY LANNAN, Associated Press Writer, CHICAGO

76. Long lines at polling places, no unusual problems reported, The Associated Press State & Local Wire, November 2, 2004, Tuesday, BC cycle, Political News, 575 words, By MAURA KELLY LANNAN, Associated Press Writer, CHICAGO

77. How to make sure your vote counts Federal voting laws solve old mistakes, Chicago Daily Herald, November 2, 2004 Tuesday, All Editions, NEWS; Pg. 1, 632 words, Eric Krol, Daily Herald Political Writer

84. Provisional ballots top elections officials' concerns, The Associated Press State & Local Wire, October 31, 2004, Sunday, BC cycle, Political News, 950 words, By MAURA KELLY LANNAN, Associated Press Writer, CHICAGO

85. Questions and answers about provisional voting, The Associated Press State & Local Wire, October 31, 2004, Sunday, BC cycle, Political News, 458 words, By MAURA KELLY LANNAN, Associated Press Writer, CHICAGO

101. Officials divided over new provisional ballot recommendation, The Associated Press State & Local Wire, October 22, 2004, Friday, BC cycle, Political News, 715 words, By MAURA KELLY LANNAN, Associated Press Writer, CHICAGO

110. Election officials must fix snafus before November, Chicago Sun-Times, August 9, 2004 Monday, EDITORIALS; Pg. 41, 479 words, Editorials

Indiana:

Indiana Provisional Ballots

1. Voter ID bill spurs two suits; Opponents of law claim it burdens elderly, poor, disabled, minorities., The Indiana Lawyer, May 18, 2005, Vol. 16; No. 5; Pg. 3, 1539 words, RON BROWNING

2. Daniels signs voter ID bill; ICLU plans lawsuit, The Associated Press State & Local Wire, April 28, 2005, Thursday, BC cycle, State and Regional, 350 words, INDIANAPOLIS

8. Governor should veto photo ID bill, South Bend Tribune (Indiana), March 23, 2005 Wednesday, Michigan Edition, Pg. B4;, 178 words

13. Board agrees better training needed for poll workers; Some votes didn't count this year because of mistakes., South Bend Tribune (Indiana), November 26, 2004 Friday, Marshall Edition, Pg. B1, 841 words, By JAMES WENSITS; Tribune Political Writer

25. Tips for voters going to the polls, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, Political News, 376 words, By The Associated Press

Iowa:

Iowa Provisional Ballots

1. Culver announces $17.5 million for election upgrades, The Associated Press State & Local Wire, March 17, 2005, Thursday, BC cycle, State and Regional, 493 words, By MIKE GLOVER, AP Political Writer, DES MOINES, Iowa

15. U.S voting system still has room to improve; Billions spent, but process still lacks consistency, Telegraph Herald (Dubuque, IA), November 5, 2004 Friday, 408 words, TELEGRAPH HERALD EDITORIAL

24. Local boards to sift through absentee, provisional ballots, The Associated Press State & Local Wire, November 3, 2004, Wednesday, BC cycle, Political News, 616 words, By MIKE GLOVER, AP Political Writer, DES MOINES, Iowa

35. Judge declines to act on provisional ballot lawsuit, The Associated Press State & Local Wire, October 28, 2004, Thursday, BC cycle, Political News, 588 words, By DAVID PITT, Associated Press Writer, DES MOINES, Iowa

40. Republicans file suit to block ballot-counting ruling, The Associated Press State & Local Wire, October 26, 2004, Tuesday, BC cycle, Political News, 742 words, DES MOINES, Iowa

45. Iowans who forgot to check citizenship box can vote, The Associated Press State & Local Wire, October 20, 2004, Wednesday, BC cycle, Political News, 476 words, By CAROL ANN RIHA, Associated Press Writer, DES MOINES, Iowa

Kansas:

Kansas Provisional Ballots

2. Thornburgh urges Congress not to expand federal role in elections, The Associated Press State & Local Wire, February 9, 2005, Wednesday, BC cycle, State and Regional, 412 words, By SAM HANANEL, Associated Press Writer, WASHINGTON

8. Provisional ballots prove crucial in state Senate race, The Associated Press State & Local Wire, November 7, 2004, Sunday, BC cycle, State and Regional, 361 words, TOPEKA, Kan.

Kentucky:

Kentucky Provisional Ballots

1. Provisional ballots by state, The Associated Press State & Local Wire, March 18, 2005, Friday, BC cycle, State and Regional; Washington Dateline, 1306 words, By The Associated Press

2. Two-thirds of provisional ballots counted, but wide variations between states, The Associated Press State & Local Wire, March 18, 2005, Friday, BC cycle, State and Regional; Washington Dateline, 592 words, By DAVID PACE, Associated Press Writer, WASHINGTON

6. Facts to help Kentucky voters with Tuesday's election, The Associated Press State & Local Wire, October 30, 2004, Saturday, BC cycle, Political News, 648 words, By JOE BIESK, The Associated Press, FRANKFORT, Ky.

Louisiana:

Louisiana Provisonal Ballots

9. Nov. 2 N.O. election called 'catastrophe', New Orleans CityBusiness (New Orleans, LA), November 15, 2004 Monday, NEWS, 1091 words, Richard A. Webster

11. Nearly 6,000 cast provisional ballots; About 40% had their votes counted, Times-Picayune (New Orleans), November 13, 2004 Saturday, NATIONAL; Pg. 2, 652 words, By Ed Anderson, Capital bureau

15. Provisional voting good and bad , The Advocate (Baton Rouge, Louisiana), November 7, 2004 Sunday, Metro Edition, NEWS; Pg. 15-B, 718 words, JOHN LAPLANTE

17. Election day chaos, Times-Picayune (New Orleans), November 6, 2004 Saturday, METRO - EDITORIAL; Pg. 6, 339 words

24. Voting frustrations mount in New Orleans - again, The Associated Press State & Local Wire, November 3, 2004, Wednesday, BC cycle, State and Regional, 874 words, By BRETT MARTEL, Associated Press Writer, NEW ORLEANS

26. Between heaven and ballot box, Times-Picayune (New Orleans), November 3, 2004 Wednesday, METRO; Lolis Eric Elie; Pg. 1, 487 words, Lolis Eric Elie

36. McKeithen: most provisional ballots won't count, The Associated Press State & Local Wire, November 1, 2004, Monday, BC cycle, State and Regional, 644 words, By BRETT MARTEL, Associated Press Writer, NEW ORLEANS

39. No picture ID need to cast ballots in Louisiana, The Associated Press State & Local Wire, October 31, 2004, Sunday, BC cycle, State and Regional, 373 words, NEW ORLEANS

45. Summary: Lost voters can use provisional ballots, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, State and Regional, 72 words, By The Associated Press

Maine:

Maine Provisional Ballots

Maine does not have provisional ballots being exempt from that section of HAVA because they allow same-day registration.

1. Electors hand in four votes for Kerry; Rather than dwell on their loss, the Democrats emphasize the high quality of Maine's election., Portland Press Herald (Maine), December 14, 2004 Tuesday, Final Edition, FRONT; Pg. A1, 684 words, JOSHUA L. WEINSTEIN Staff Writer, AUGUSTA

5. Only two more voting days left until Nov. 2; Maine makes it so easy to cast a ballot that anyone can do it - and thus, everyone should., Portland Press Herald (Maine), October 31, 2004 Sunday, FINAL Edition, EDITORIAL; Our Views; Pg. C4, 327 words

Maryland:

Maryland Provisional Ballots

3. Commentary: UB Viewpoint - The impact of election reform in Maryland, The Daily Record (Baltimore, MD), March 11, 2005 Friday, COMMENTARY, 1051 words, John T. Willis

5. TrueVote recommendations for improving elections, The Associated Press State & Local Wire, November 23, 2004, Tuesday, BC cycle, State and Regional, 133 words, By The Associated Press

10. Commentary: The erosion of American democracy, The Daily Record (Baltimore, MD), November 5, 2004 Friday, COMMENTARY, 1460 words, Martin S. Himeles Jr.

20. Voter's guide to the Maryland election, The Associated Press State & Local Wire, October 30, 2004, Saturday, BC cycle, Political News, 547 words, By The Associated Press

24. Elections chief says Maryland ready for Nov. 2, The Associated Press State & Local Wire, October 17, 2004, Sunday, BC cycle, Political News, 1292 words, By TOM STUCKEY, Associated Press Writer, ANNAPOLIS, Md.

26. Election board won't count paper ballots, The Associated Press State & Local Wire, July 2, 2004, Friday, BC cycle, State and Regional, 181 words, ANNAPOLIS, Md.

Massachusetts:

Massachusetts Provisional Ballots

1. STUDY FINDS VOTING TROUBLE FOR SOME STATE RESIDENTS SAYS NEARLY 9% DENIED BALLOTS, The Boston Globe, June 9, 2005, Thursday, THIRD EDITION, Pg. B6, 858 words, By Rebecca Mahoney, Globe Correspondent

13. VOTING ERRORS TALLIED NATIONWIDE, The Boston Globe, December 1, 2004, Wednesday, THIRD EDITION, Pg. A1, 2225 words, By Brian C. Mooney GLOBE STAFF

25. Voter fraud made easy, The Berkshire Eagle (Pittsfield, Massachusetts), November 13, 2004 Saturday, LETTERS, 169 words

26. PREPARING FOR 2008, The Boston Globe, November 12, 2004, Friday, THIRD EDITION, Pg. A18, 463 words

32. Students cry foul over voter sign-up snafu, The Berkshire Eagle (Pittsfield, Massachusetts), November 8, 2004 Monday, HEADLINES, 670 words, D.R. Bahlman, Berkshire Eagle Staff, PITTSFIELD

64. BIG TURNOUT, FEW GLITCHES REPORTED AT STATE POLLS LONG LINES FAIL TO DETER VOTERS IN MANY TOWNS, The Boston Globe, November 3, 2004, Wednesday, THIRD EDITION, Pg. B7, 731 words, By Michael Levenson, Globe Correspondent

77. Common sense vs. fraud, Sentinel & Enterprise (Fitchburg, Massachusetts), November 3, 2004 Wednesday, TODAY'S EDITORIALS, 420 words

79. NEW ID CHECKS TAKE EFFECT AS RECORD TURNOUT IS EXPECTED, The Boston Globe, November 2, 2004, Tuesday, THIRD EDITION, Pg. B4, 522 words, By Elise Castelli
Globe Correspondent

92. Voter information for Election Day 2004, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, State and Regional; Political News, 565 words, By The Associated Press

93. Law requires IDs from new voters, Lowell Sun (Lowell, MA), October 28, 2004 Thursday, TODAY'S HEADLINES<!--NAV:SPACE_BEFORE--, 546 words, MICHAEL LAFLEUR, Sun Staff

94. Election Day do's and don'ts, The Berkshire Eagle (Pittsfield, Massachusetts), October 27, 2004

Wednesday, OTHER OPINIONS, 558 words, Bill Shein

99. Republicans planning a heist By Robert Kuttner, The Berkshire Eagle (Pittsfield, Massachusetts), October 23, 2004 Saturday, OTHER OPINIONS, 746 words

Michigan:

Michigan Provisional Ballots

2. Lawmakers call for investigations into long lines at voting stations, The Associated Press State & Local Wire, January 12, 2005, Wednesday, BC cycle, State and Regional, 244 words, By MALIA RULON, Associated Press Writer, WASHINGTON

4. Michigan voters cast 3,100 provisional ballots in general election, The Associated Press State & Local Wire, November 9, 2004, Tuesday, BC cycle, State and Regional, 285 words, LANSING, Mich.

6. Provisional ballots: the next hanging chads or largely insignificant?, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, State and Regional; Political News, 836 words, By DAVID EGGERT, Associated Press Writer, LANSING, Mich.

9. Summary Box: Provisional ballots, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, State and Regional; Political News, 108 words, By The Associated Press

12. Main controversy over provisional ballots probably over for now, The Associated Press State & Local Wire, October 28, 2004, Thursday, BC cycle, Political News, 582 words, By ANNE GEARAN, Associated Press Writer, WASHINGTON

15. Appeals court reverses lower-court ruling on provisional ballots in Michigan, The Associated Press State & Local Wire, October 26, 2004, Tuesday, BC cycle, State and Regional; Political News, 514 words, CINCINNATI

18. Federal appeals court: Provisional ballots cast outside voter's home precinct not valid, The Associated Press State & Local Wire, October 23, 2004, Saturday, BC cycle, Political News, 735 words, By JOE KAY, Associated Press Writer, CINCINNATI

23. Federal judge says Michigan must count provisional ballots in wrong precincts, The Associated Press State & Local Wire, October 19, 2004, Tuesday, BC cycle, State and Regional; Political News, 719 words, By DAVID EGGERT, Associated Press Writer, LANSING, Mich.

27. Democrats sue to allow provisional ballots cast in wrong precinct, The Associated Press State & Local Wire, September 29, 2004, Wednesday, BC cycle, State and Regional; Political News, 342 words, By AMY F. BAILEY, Associated Press Writer, LANSING, Mich.

Minnesota:

Minnesota Provisional Ballots

Minnesota does not have provisional ballots, being exempt from that portion of HAVA because they allow same-day registration.

3. Voting; Flaws need federal attention, Star Tribune (Minneapolis, MN), November 14, 2004, Sunday, Metro Edition, NEWS; OP EX; Pg. 4AA, 670 words

7. Needed or not, poll watchers oversee uneventful election, The Associated Press State & Local Wire, November 3, 2004, Wednesday, BC cycle, Political News, 664 words, By GREGG AAMOT, Associated Press Writer, MINNEAPOLIS

8. The franchise; A still-imperfect democracy, Star Tribune (Minneapolis, MN), November 3, 2004, Wednesday, Metro Edition, NEWS; Pg. 28A, 629 words

Mississippi:

Mississippi Provisional Ballots

1. Group finds voting problems across South, The Associated Press State & Local Wire, November 6, 2004, Saturday, BC cycle, State and Regional, 540 words, By DOUG GROSS, Associated Press Writer, ATLANTA

Missouri:

Missouri Provisional Ballots

1. Man claims judges allowed illegal voting Poll watcher was told to leave precinct in East St. Louis, St. Louis Post-Dispatch (Missouri), April 7, 2005 Thursday, ILLINOIS FIVE STAR LIFT EDITION, METRO; Pg. B2, 421 words, BY CAROLYN TUFT Of the Post-Dispatch

7. Less than half of provisional ballots in Missouri counted, The Associated Press State & Local Wire, November 29, 2004, Monday, BC cycle, State and Regional, 564 words, By KELLY WIESE, Associated Press Writer, JEFFERSON CITY, Mo.

14. Election Day was a lesson in life and civics, St. Louis Post-Dispatch (Missouri), November 7, 2004 Sunday, FIVE STAR LATE LIFT EDITION, EDITORIAL; Commentary Column; Pg. B03, 385 words, By CHARLES A. NEWMAN

21. City declares election a success; prepares for next challenge, The Associated Press State & Local Wire, November 3, 2004, Wednesday, BC cycle, Political News, 699 words, By CHERYL WITTENAUER, Associated Press Writer, ST. LOUIS

35. Voting in Missouri, St. Louis Post-Dispatch (Missouri), November 2, 2004 Tuesday, FIVE STAR LATE LIFT EDITION, METRO; Pg. B02, 365 words

38. A voter's rights, St. Louis Post-Dispatch (Missouri), November 2, 2004 Tuesday, FIVE STAR LATE LIFT EDITION, EDITORIAL; Pg. B06, 752 words

50. Voting 101: Bring ID, be patient, ask for help, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, Political News, 740 words, By SCOTT CHARTON, AP Political Writer

52. Black voters will draw scrutiny, St. Louis Post-Dispatch (Missouri), October 29, 2004 Friday Five Star Late Lift Edition, METRO; Pg. B01, 959 words, JO MANNIES Post-Dispatch Political Correspondent

70. U.S. judge spells out when they are valid, St. Louis Post-Dispatch (Missouri), October 13, 2004 Wednesday Five Star Late Lift Edition Correction Appended, METRO; Pg. B01, 622 words, JO MANNIES Post-Dispatch Political Correspondent

88. Judge may rule today on provisional balloting, St. Louis Post-Dispatch (Missouri), August 11, 2004 Wednesday Five Star Late Lift Edition, METRO; Pg. B01, 612 words, JO MANNIES Post-Dispatch Political Correspondent

Montana:

Montana Provisional Ballots

No stories in local newspapers.

Nebraska:

Nebraska Provisional Ballots

1. Probe finds no bias in Omaha's balloting Nebraska's secretary of state responds to criticism from Democratic leaders., Omaha World-Herald (Nebraska), June 15, 2005, Wednesday, METRO;NEBRASKA;SUNRISE EDITION, Pg. 01B;, 502 words, Joseph Morton

6. Bill will smooth voters' path to polls, Omaha World-Herald (Nebraska), May 10, 2005, Tuesday, SUNRISE EDITION, Pg. 01A;, 308 words, Martha Stoddard, LINCOLN

8. Provisional ballots available for voters, Lincoln Journal Star (Nebraska), April 29, 2005 Friday, City Edition, B; Pg. 5, 153 words, Lincoln, NE

10. Rural voters stand to benefit, Lincoln Journal Star (Nebraska), March 31, 2005 Thursday, City Edition, B; Pg. 1, 965 words, NANCY HICKS, Lincoln Journal Star

29. Provisional ballots 80% valid in state, Omaha World-Herald (Nebraska), November 11, 2004, Thursday, NEBRASKA;SUNRISE EDITION, Pg. 01B;, 513 words, Tom Shaw

36. Voting system still in need of improvement, Lincoln Journal Star (Nebraska), November 6, 2004 Saturday, City Edition, B; Pg. 5, 446 words

43. Provisional ballots mount in Nebraska, The Associated Press State & Local Wire, November 4, 2004, Thursday, BC cycle, State and Regional; Political News, 467 words, By The Associated Press

46. Reasons for provisional ballot use to be probed About 8,000 people in Douglas County cast the ballots in Tuesday's election., Omaha World-Herald (Nebraska), November 4, 2004, Thursday, METRO EDITION, Pg. 06A;, 346 words, Tom Shaw

72. Frequently asked questions and answers about voting, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, State and Regional, 370 words

77. Tainted democracy Gratuitious allegations of fraud can promote distrust in system., Omaha World-Herald (Nebraska), October 27, 2004, Wednesday, IOWA;METRO;MIDLANDS;NEBRASKA;SUNRISE EDITION, Pg. 06B;, 516 words, 11

Nevada:

Nevada Provisional Ballots

1. Nevada committees take up election reform, The Associated Press State & Local Wire, May 5, 2005, Thursday, BC cycle, State and Regional, 636 words, By ELIZABETH WHITE, Associated Press Writer, CARSON CITY, Nev.

3. Nevada provisional ballot bill causes confusion, The Associated Press State & Local Wire, April 7, 2005, Thursday, BC cycle, State and Regional, 501 words, By ELIZABETH WHITE, Associated Press Writer, CARSON CITY, Nev.

30. EDITORIAL: Voter responsibility, Las Vegas Review-Journal (Nevada), November 11, 2004 Thursday, FINAL EDITION, B;, Pg. 8B, 360 words

41. Local polls largely problem-free, Las Vegas Review-Journal (Nevada), November 3, 2004 Wednesday, FINAL EDITION, A;, Pg. 6A, 802 words, J.M. KALIL and RICHARD LAKE

New Hampshire:

New Hampshire is exempted from using provisional ballots.

New Hampshire Provisional Ballots

1. Proposed law would eliminate election day registration, The Associated Press State & Local Wire, February 9, 2005, Wednesday, BC cycle, State and Regional, 532 words, By ANNE SAUNDERS, Associated Press Writer, CONCORD, N.H.

6. Lawyers gear up for Nov. 2 battles, The Union Leader (Manchester NH), October 31, 2004 Sunday STATE EDITION, NEWS; Pg. A1, 1714 words, By SHAWNE K. WICKHAM Sunday News Staff

New Jersey:

New Jersey Provisional Ballots

12. Is there more fraud in voters' future?; When Hudson clerk says so, N.J. should listen, The Record (Bergen County, NJ), March 14, 2005 Monday, All Editions, NEWS; CAPITAL GAMES; Pg. A03, 972 words, HERB JACKSON, North Jersey Media Group

21. Election foul-ups to rock New Jersey's vote?, The Record (Bergen County, NJ), January 24, 2005 Monday, All Editions, NEWS; CAPITAL GAMES; Pg. A01, 1282 words, HERB JACKSON, North Jersey Media Group

29. Students' ballots could get election tossed; Little Falls loser goes to court, The Record (Bergen County, NJ), December 16, 2004 Thursday, Two Star P Edition, LOCAL; Pg. L03, 607 words, By AMY L. KOVAC, SPECIAL TO THE RECORD, North Jersey Media Group

49. With Lawyers and Judges Watching, Election Day Challenges Are Light, New Jersey Law Journal, November 8, 2004, 1408 words, By Henry Gottlieb

77. Most voting glitches merely annoying; Missing registrations among top problems, The Record (Bergen County, NJ), November 3, 2004 Wednesday Correction Appended, All Editions, NEWS; Pg. A01, 1475 words, By AMY KLEIN, TOM DAVIS and BRIAN KLADKO, STAFF WRITERS, North Jersey Media Group

79. Election Day chaos is a national scandal, The Record (Bergen County, NJ), November 2, 2004 Tuesday, All Editions, OPINION; Pg. L13, 2150 words, E.J. DIONNE, Wire Services

80. Constitutional scholar expects 'chaos' at N.J. polls, The Record (Bergen County, NJ), November 1, 2004 Monday, All Editions, NEWS; Pg. A01, 891 words, By AMY KLEIN, STAFF WRITER, North Jersey Media Group

87. Voter rights guide available; Group gives advice on poll problems, Herald News (Passaic County, NJ), October 15, 2004 Friday, Early Edition, OUR TOWNS; Pg. B05, 455 words, By CHARLES AUSTIN, Special to the Herald News, North Jersey Media Group

94. No Smooth Sailing as New Jersey Implements Election Reform Act, New Jersey Law Journal, October 4, 2004, 969 words, By Charles Toutant

103. ID required of some primary voters; New law affects those registered since 2003, The Record (Bergen County, NJ), June 8, 2004 Tuesday, All Bergen Editions, LOCAL; Pg. L01, 305 words, By SHANNON D. HARRINGTON, STAFF WRITER, North Jersey Media Group

New Mexico:

New Mexico Provisional Ballots

MALDEF Press Release
http://www.maldef.org/news/press.cfm?ID=238

7. Gov. Signs Voting Standards Bill, Albuquerque Journal (New Mexico), April 7, 2005 Thursday, FINAL; Pg. C3, 424 words, Andy Lenderman Journal Politics Writer

12. Senate approves election reform bill, The Associated Press State & Local Wire, March 16, 2005, Wednesday, BC cycle, State and Regional, 487 words, By DEBORAH BAKER, Associated Press Writer, SANTA FE

16. Voter ID doesn't get to real election problems, Albuquerque Tribune (New Mexico), February 19, 2005 Saturday, WEEKEND; Pg. C1, 463 words

20. Governor reveals voter ID package, Albuquerque Tribune (New Mexico), February 15, 2005 Tuesday, EVENING; Pg. A1, 654 words, Shea Andersen

37. Voter ID Hot Issue, Albuquerque Journal (New Mexico), January 21, 2005 Friday, FINAL; Pg. A1, 679 words, Andy Lenderman Journal Politics Writer

73. We need clarity, but we don't need chaos, Albuquerque Tribune (New Mexico), December 2, 2004 Thursday, EVENING; Pg. C2, 465 words

86. GOVERNOR: ELECTION REFORM STILL NEEDED, The Santa Fe New Mexican (New Mexico), November 24, 2004 Wednesday, MAIN; Pg. A-1, 1032 words, STEVE TERRELL

99. Fiasco or not, vote counting is one piece of work, Albuquerque Tribune (New Mexico), November 13, 2004 Saturday, WEEKEND; Pg. A2, 614 words, Kate Nelson Commentary

129. Clerk Tossing 25% of Ballots, Albuquerque Journal (New Mexico), November 9, 2004 Tuesday, FINAL; Pg. A1, 791 words, Dan McKay and David Miles Journal Staff Writer

136. N.M. Voters Are Red With Embarrassment, Albuquerque Journal (New Mexico), November 8, 2004 Monday Correction Appended, FINAL; Pg. B8, 625 words, Leann Holt Journal Staff Writer

141. Indian Voters Not Protected, Albuquerque Journal (New Mexico), November 7, 2004 Sunday, JOURNAL SANTA FE; Pg. S1, 463 words

158. Provisional Ballots To Be Counted, Albuquerque Journal (New Mexico), November 5, 2004 Friday, RIO RANCHO JOURNAL; Pg. 1, 548 words, Joshua Akers Journal Staff Writer

200. Tuesday's voting troubles were of benign kind, Albuquerque Tribune (New Mexico), November 3, 2004 Wednesday, EVENING; Pg. A4, 933 words, Joline Gutierrez Krueger

243. Tips for Your Trip to the Polls, Albuquerque Journal (New Mexico), November 1, 2004 Monday, FINAL; Pg. A10, 275 words

244. Poll Workers Get Ready for Anything; Voting Tips, Albuquerque Journal (New Mexico), October 31, 2004 Sunday, FINAL; Pg. B1, 1522 words, Dan McKay Journal Staff Writer

248. Voter ID requirement causing new uproar, The Associated Press State & Local Wire, October 26, 2004, Tuesday, BC cycle, State and Regional, 729 words, By BARRY MASSEY, Associated Press Writer, SANTA FE

261. VOTER-ID RULE TOSSED; LAW STILL NEEDS WORK, The Santa Fe New Mexican (New Mexico), September 29, 2004 Wednesday, EDITORIALS; Pg. A-9, 625 words

268. COMMENTARY: MAKING SURE THE RIGHT VOTES COUNT, The Santa Fe New Mexican (New Mexico), September 26, 2004 Sunday, EDITORIALS; Pg. F-1, 853 words, INEZ RUSSELL

New York:

New York Provisional Ballots

7. WHOSE VOTE FRAUD?, The New York Post, February 27, 2005 Sunday, All Editions; Pg. 28, 618 words

8. Tackling Election Reform, The New York Times, February 22, 2005 Tuesday, Late Edition - Final, Section A; Column 1; Editorial Desk; Pg. 16, 514 words

9. When Elections Go Bad, The New York Times, February 13, 2005 Sunday, Late Edition - Final, Section 4; Column 1; Editorial Desk; Pg. 14, 461 words

10. Three months after Election Day, Spano is sworn in again as senator, The Associated Press State & Local Wire, February 9, 2005, Wednesday, BC cycle, State and Regional, 724 words, By JOEL STASHENKO, Associated Press Writer

46. Stalling the Vote, The New York Times, December 5, 2004 Sunday, Late Edition - Final, Section 14WC; Column 1; Westchester Weekly Desk; Pg. 19, 334 words

55. Improving Provisional Ballots, The New York Times, November 21, 2004 Sunday, Late Edition - Final, Section 4; Column 1; Editorial Desk; Pg. 12, 589 words

75. New Standards for Elections, The New York Times, November 7, 2004 Sunday, Late Edition - Final, Section 4; Column 1; Editorial Desk; Pg. 10, 1103 words

78. Fraudulent Voters Bused In, Westchester Republicans Say, The New York Times, November 5, 2004 Friday, Late Edition - Final, Section B; Column 5; Metropolitan Desk; Pg. 7, 567 words, By KIRK SEMPLE and JENNIFER MEDINA

131. What to Do on Election Day, The New York Times, November 1, 2004 Monday, Late Edition - Final, Section A; Column 1; Editorial Desk; Pg. 24, 541 words

141. A presidential election this way comes, The Times Union (Albany, New York), November 1, 2004 Monday, ONE STAR EDITION, MAIN; Pg. A9, 820 words, RENEE LOTH

150. Voter information for Election Day 2004, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, State and Regional; Political News, 565 words, By The Associated Press

161. Before You Vote, The New York Times, October 26, 2004 Tuesday, Late Edition - Final, Section G; Column 2; Voter Guide 2004; THE VOTING; Pg. 2, 175 words, By Katharine Q. Seelye

North Carolina:

North Carolina Provisional Ballots

Title: CNN.com - N. Carolina election fight drags on - Jun 6, 2005
http://www.emailthis.clickability.com/et/emailThis?clickMap=viewThis&etMailToID=877131764&pt=Y

North Carolina Provisional Ballots

6. DAVIS TO TAKE POST AS INTERIM HEAD OF SCHOOLS, Winston-Salem Journal (Winston Salem, NC), June 1, 2005 Wednesday, METRO EDITION, B; The Region; Pg. 2, 436 words, JOURNAL STAFF AND WIRE REPORT, RALEIGH

14. N.C. appeals court denies Fletcher stay in schools chief race, The Associated Press State & Local Wire, May 11, 2005, Wednesday, BC cycle, State and Regional, 358 words, By GARY D. ROBERTSON, Associated Press Writer, RALEIGH, N.C.

15. Fletcher shifts focus to Legislature in election dispute, The Associated Press State & Local Wire, May 11, 2005, Wednesday, BC cycle, State and Regional, 452 words, By GARY D. ROBERTSON, Associated Press Writer, RALEIGH, N.C.

24. Send in a superintendent, The News & Observer (Raleigh, North Carolina), May 9, 2005 Monday, Final Edition, EDITORIAL/OPINION; Pg. A10, 255 words

93. N.C. contest rules likely to become law, but picking winner could take time, The Associated Press State & Local Wire, February 24, 2005, Thursday, BC cycle, State and Regional, 735 words, By GARY D. ROBERTSON, Associated Press Writer, RALEIGH, N.C.

98. N.C. Senate approve bill to reaffirm counting key provisional ballots, The Associated Press State & Local Wire, February 22, 2005, Tuesday, BC cycle, State and Regional, 421 words, RALEIGH, N.C.

114. Provisional voting, The News & Observer (Raleigh, North Carolina), February 11, 2005 Friday, Final Edition, EDITORIAL/OPINION; Pg. A20, 264 words

142. N.C. Supreme Court takes on out-of-precinct ballot issue, The Associated Press State & Local Wire, January 18, 2005, Tuesday, BC cycle, State and Regional, 691 words, By GARY D. ROBERTSON,

Associated Press Writer, RALEIGH, N.C.

149. Race enters ballot tiff; Groups assail discounting votes, The News & Observer (Raleigh, North Carolina), January 15, 2005 Saturday, Final Edition, NEWS; Pg. B5, 470 words, Lynn Bonner, Staff Writer

172. Not a perfect election, but no proof of fraud, The News & Observer (Raleigh, North Carolina), December 12, 2004 Sunday, Final Edition, QUESTION; Pg. A24, 735 words, James Rosen, Washington Bureau

185. CARTERET COUNTY TO VOTE AGAIN FOR AGRICULTURE POST N.C. ELECTIONS BOARD'S COMPROMISE MEANS TROXLER-COBB RACE WILL BE DECIDED ON JAN. 11, Winston-Salem Journal (Winston Salem, NC), December 1, 2004 Wednesday, METRO EDITION, B; Pg. 1, 759 words, By David Ingram JOURNAL RALEIGH BUREAU, RALEIGH

199. North Carolina's ballot blues, The News & Observer (Raleigh, North Carolina), November 26, 2004 Friday, Final Edition, EDITORIAL/OPINION; Point of View; Pg. A21, 579 words, Joyce Mccloy

201. N.C. voting problems: 2004 edition, The News & Observer (Raleigh, North Carolina), November 22, 2004 Monday, Final Edition, NEWS; Pg. A7, 456 words

269. No identification, The News & Observer (Raleigh, North Carolina), November 4, 2004 Thursday, Final Edition, EDITORIAL/OPINION; Pg. A21, 119 words

304. Provisional ballots, The News & Observer (Raleigh, North Carolina), November 2, 2004 Tuesday, Final Edition, EDITORIAL/OPINION; Pg. A14, 154 words

305. Q&A: WHAT TO EXPECT AT POLLING PLACES, News & Record (Greensboro, NC), November 2, 2004 Tuesday ALL EDITIONS, 311 words, Mark Binker Staff Writer

310. Voters' Q&A, The News & Observer (Raleigh, North Carolina), October 30, 2004 Saturday, Final Edition, SPECIAL SECTIONS; Pg. H3, 365 words

311. A voter's guide to Election Day procedures, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, Political News, 730 words, RALEIGH, N.C.

North Dakota:

North Dakota is exempt from using provisional ballots because they do no require voter registration.

Ohio:

http://www.ac4vr.com/reports/072005/default.html

http://a9.g.akamai.net/7/9/8082/v001/www.democrats.org/pdfs/ohvrireport/fullreport.pdf

1. Validation of provisional ballots in Ohio is tedious process, The Associated Press State & Local Wire, November 10, 2004, Wednesday, BC cycle, State and Regional; Political News, 825 words, By CONNIE MABIN, Associated Press Writer, CLEVELAND

2. Summary box: Eyes on Ohio again as provisional ballots processed, The Associated Press State & Local Wire, November 10, 2004, Wednesday, BC cycle, State and Regional, 86 words, By The Associated Press

24. Provisional-ballot process starts today; Election workers seek to verify which of 155,337 count, Dayton Daily News (Ohio), November 4, 2004 Thursday, SPECIAL; Pg. AA2, 533 words, By Laura A. Bischoff

73. Plan to vote? What you should know, Plain Dealer (Cleveland), November 2, 2004 Tuesday, Final Edition; All Editions, NATIONAL; Pg. A2, 472 words, Grant Segall, Plain Dealer Reporter

80. Provisional ballots: the chads of 2004?, Plain Dealer (Cleveland), November 1, 2004 Monday, FINAL Edition; ALL Editions, NATIONAL; Pg. A1, 733 words, DIANE SUCHETKA, PLAIN DEALER REPORTER

82. VOTERS GUIDE, Columbus Dispatch (Ohio), October 31, 2004 Sunday, Home Final Edition, 395 words

123. ELECTION OFFICIALS HAPPY NOW THAT PROVISIONAL-BALLOT ISSUE IS PUT TO BED; Ohio GOP withdraws thousands of challenges to new registrants, Columbus Dispatch (Ohio), October 25, 2004 Monday, Home Final Edition, 1061 words, Mark Niquette, THE COLUMBUS DISPATCH

Oklahoma:

Oklahoma Provisional Ballots

1. Provisional ballots by state, The Associated Press State & Local Wire, March 18, 2005, Friday, BC cycle, State and Regional; Washington Dateline, 1306 words, By The Associated Press

23. It's nearly over, Tulsa World (Oklahoma), November 1, 2004 Monday, Final Home Edition, News, Elections; Focus,; Pg. A17, 1359 words, ROBERT EVATT World Staff Writer

Oregon:

Most coverage focused on the Washington governor's race.
Oregon Provisional Ballots

93. VOTING POSTMORTEM IN WASHINGTON, The Oregonian (Portland, Oregon), January 8, 2005 Saturday, SUNRISE EDITION, EDITORIAL; Pg. B06, 514 words

176. Republicans distance selves from vote-blocking attempt, The Associated Press State & Local Wire, November 1, 2004, Monday, BC cycle, State and Regional, 614 words, By JULIA SILVERMAN, Associated Press Writer, PORTLAND, Ore.

179. SOME IN COUNTY FAIL TO GET BALLOT, The Oregonian, October 29, 2004 Friday, SUNRISE EDITION, SOUTH ZONER;, Pg. C02, 467 words, BRAD SCHMIDT - The Oregonian

Pennsylvania:

Pennsylvania Provisional Ballots

14. Few problems with paper ballots, Pittsburgh Tribune Review, May 18, 2005 Wednesday, 665 words, Andrew Conte

16. Panel to endorse earlier primary, easier absentee balloting, The Associated Press State & Local Wire, May 6, 2005, Friday, BC cycle, State and Regional, 728 words, By PETER JACKSON, Associated Press Writer, HARRISBURG, Pa.

20. Panel unveils repairs to voting problems, Pittsburgh Tribune Review, April 28, 2005 Thursday, 567 words, Glenn May

34. Poor training cited in election problems, Pittsburgh Tribune Review, December 16, 2004 Thursday, 292 words, Brandon Keat

52. More than half of state's provisional ballots rejected, The Evening Sun (Hanover, PA), December 6, 2004 Monday, STATE & REGION NEWS, 357 words

56. Group: County had most vote questions in U.S., Pittsburgh Tribune Review, December 1, 2004 Wednesday, 461 words, Glenn May

58. Provisional ballots are still mystery, Pittsburgh Tribune Review, November 29, 2004 Monday, 380

words, Glenn May

71. Counting of provisional ballots still going on, INTELLIGENCER JOURNAL (LANCASTER, PA.), November 10, 2004, Wednesday, Pg. A-1, 831 words, Charles Lardner

73. FIXING ELECTIONS; LET'S VOTE TO END PROBLEMS AT THE POLLING PLACE, Pittsburgh Post-Gazette (Pennsylvania), November 8, 2004 Monday, SOONER EDITION, Pg.A-16, 415 words

107. Few problems reported in Pa. voting, The Associated Press State & Local Wire, November 3, 2004, Wednesday, BC cycle, Political News, 556 words, By DAVID B. CARUSO and MICHAEL RUBINKAM, Associated Press Writers, PHILADELPHIA

124. Shortfall of special ballots is glitch in county voting, Pittsburgh Tribune Review, November 3, 2004 Wednesday, 1105 words, Andrew Conte

127. Few substantial vote complaints in York, The York Dispatch (York, PA), November 3, 2004 Wednesday, TOP STORIES, 941 words, WENDI HIMMELRIGHT The York Dispatch

139. Voters, don't forget your licenses today, Pittsburgh Tribune Review, November 2, 2004 Tuesday, 1012 words, David M. Brown and Andy Conte

141. Voters: What you will need to know; Local officials are geared up to make this Election Day smooth., LANCASTER NEW ERA (LANCASTER, PA.), November 1, 2004, Monday, Pg. A-1, 436 words, Tom Murse

151. PROVISIONAL VOTES COULD ADD A NEW TWIST TO TUESDAY'S ELECTION, Pittsburgh Post-Gazette (Pennsylvania), October 29, 2004 Friday, SOONER EDITION, Pg.A-1, 850 words, Jerome L. Sherman, Pittsburgh Post-Gazette

157. LEAGUE OF WOMEN VOTERS GUIDE TO THE GENERAL ELECTION, NOVEMBER 2, 2004/POLLS WILL BE OPEN FROM 7 A.M. TO 8 P.M. ON ELECTION DAY, Pittsburgh Post-Gazette (Pennsylvania), October 26, 2004 Tuesday, SOONER EDITION, Pg.B-3, 558 words

175. Changes at the polls; From IDs to provisional ballots, this election should be more reliable than in 2000, INTELLIGENCER JOURNAL (LANCASTER, PA.), October 11, 2004, Monday, Pg. A-8,, 568 words

Rhode Island:

Rhode Island Provisional Ballots

18. CAMPAIGN 2004 - R.I. drops rule on voter IDs, The Providence Journal (Rhode Island), November 2, 2004 Tuesday, All Editions, NEWS; Pg. A-09, 564 words, BRUCE LANDIS, Journal Staff Writer

22. Here's what you should know when you go to vote, The Associated Press State & Local Wire, November 1, 2004, Monday, BC cycle, State and Regional, 493 words, PROVIDENCE, R.I.

28. Police charge two with voter fraud, The Providence Journal (Rhode Island), October 30, 2004 Saturday, All Editions, NEWS; Pg. A-03, 577 words, GINA MACRIS, Journal Staff Writer

51. Scary scenarios for upcoming elections, The Providence Journal (Rhode Island), August 27, 2004 Friday, All Editions, EDITORIAL; Pg. B-05, 936 words, M.J. Andersen

South Carolina:

South Carolina Provisional Ballots

73. Glitches thwart some S.C. voters, The Associated Press State & Local Wire, November 3, 2004, Wednesday, BC cycle, Political News, 728 words, By PAMELA HAMILTON, Associated Press Writer,

COLUMBIA, S.C.

78. What to know on Election Day, The Herald (Rock Hill, S.C.), November 1, 2004 Monday, FINAL EDITION, Pg. 2B, 352 words

83. Provisional ballots give registered voters a voice if denied at polls, The Herald (Rock Hill, S.C.), October 29, 2004 Friday, FINAL EDITION, Pg. 1B, 509 words, By Erica Pippins / The Herald

South Dakota:

South Dakota Provisional Ballots

Copyright 2004 Associated Press All Rights Reserved The Associated Press State & Local Wire November 2, 2004, Tuesday, BC cycle SECTION: Political News LENGTH: 421 words HEADLINE: Some problems and oddities reported on Election Day BYLINE: By CARSON WALKER, Associated Press Writer

Tennessee:

Tennessee Provisional Ballots

6. Not all votes yet count, Chattanooga Times Free Press (Tennessee), December 31, 2004 Friday, TIMES EDITORIAL; Pg. B6, 542 words

10. Bush won with a little 'counting' yet to go -- 1,610 affidavit ballots won't change the result, The Commercial Appeal (Memphis, TN), November 4, 2004 Thursday Final Edition, 385 words, Richard Thompson

20. Provisional voting raises issues, The Commercial Appeal (Memphis, TN), October 26, 2004 Tuesday Final Edition, 349 words, Richard Locker

26. Group warns of Florida-style election fiasco, Chattanooga Times Free Press (Tennessee), October 20, 2004 Wednesday, WIRE - POLITICS; Pg. A4, 481 words

Texas:

Texas Provisional Ballots

24. Connor chastises Harris County election official, The Associated Press State & Local Wire, November 5, 2004, Friday, BC cycle, Political News, 400 words, AUSTIN

48. VOTING WITH CONFIDENCE ; Few problems are reported at polling sites across nation, San Antonio Express-News (Texas), November 3, 2004, Wednesday, BULLDOG, Pg. 1A, 846 words, Joseph S. Stroud

52. New federal law calls for provisional ballots, The Associated Press State & Local Wire, November 1, 2004, Monday, BC cycle, Political News, 404 words, By KELLEY SHANNON, AP Political Writer, AUSTIN

57. Provisional ballots could bog down election count, Austin American-Statesman (Texas), October 29, 2004 Friday, NEWS; Pg. A6, 586 words, Julia Malone, WASHINGTON BUREAU

Utah:

Utah Provisional Ballots

1. Utah beats most states in counting provisional ballots, The Associated Press State & Local Wire, March 27, 2005, Sunday, BC cycle, State and Regional, 450 words, SALT LAKE CITY

3. Reformers eye next vote, Deseret Morning News (Salt Lake City), January 3, 2005 Monday, 997 words, Josh Loftin Deseret Morning News

5. Not every Utah voted counted, but more did than in 2000 ; Percentage improves: This time, only 13 of 1,000 votes were thrown out because of errors, Salt Lake Tribune (Utah), November 25, 2004, Thursday, Utah; Pg. C15, 850 words, Robert Gehrke , The Salt Lake Tribune

9. Every vote counts, Deseret Morning News (Salt Lake City), November 22, 2004 Monday, 372 words, Deseret Morning News editorial

22. Some tips for voters, Salt Lake Tribune (Utah), November 2, 2004, Tuesday, Utah; Pg. A1, 170 words

26. Be aware of changes in vote laws, Deseret Morning News (Salt Lake City), November 1, 2004 Monday, 643 words, Josh Loftin Deseret Morning News

Vermont:

No coverage of provisional voting in local newspapers.

Virginia:

Virginia Provisional Ballots

1. COUNTY MAN'S VOTE WON'T COUNT; HE SAYS HE REGISTERED; CHESTERFIELD REGISTRAR SAYS THERE'S NO PROOF, Richmond Times Dispatch (Virginia), June 16, 2005 Thursday, ONE STAR EDITION, AREA/STATE; Pg. B-6, 557 words, By Julian Walker Times-Dispatch Staff Writer

18. CLOSE VOTE SPOTLIGHTS SYSTEM'S LINGERING FLAWS, Roanoke Times & World News (Roanoke, VA), November 4, 2004 Thursday Metro Edition, 405 words

28. Before heading to polls, have ID to show and know where to go, The Virginian-Pilot(Norfolk, Va.), November 2, 2004 Tuesday, The Virginian-Pilot Edition, Pg. A1, 720 words, JOHN-HENRY DOUCETTE

30. A primer for Virginia voters in Tuesday's election, The Associated Press State & Local Wire, October 30, 2004, Saturday, BC cycle, State and Regional, 512 words, By The Associated Press

Washington:

Washington Provisional Ballots

6. Judge allows "proportional analysis" method in election challenge, The Associated Press State & Local Wire, May 2, 2005, Monday, BC cycle, State and Regional, 888 words, By REBECCA COOK, Associated Press Writer, WENATCHEE, Wash.

14. Logan: King County may never know number of illegal ballots, The Associated Press State & Local Wire, April 26, 2005, Tuesday, BC cycle, State and Regional, 818 words, By REBECCA COOK, Associated Press Writer, OLYMPIA, Wash.

100. Judge rules for Democrats, allows provisional ballot count, The Associated Press State & Local Wire, November 16, 2004, Tuesday, BC cycle, State and Regional, 550 words, SEATTLE

119. Election officials now feel impact of large turnout, The Associated Press State & Local Wire, November 3, 2004, Wednesday, BC cycle, Political News, 511 words, By TIM BOOTH, Associated Press Writer, SEATTLE

120. Army of lawyers, poll watchers mobilizes for Election Day, The Associated Press State & Local Wire, October 31, 2004, Sunday, BC cycle, State and Regional, 822 words, By REBECCA COOK, Associated Press Writer, SEATTLE

http://seattletimes.nwsource.com/html/opinion/2002324029_hasen10.html http://seattlepi.nwsource.com/local/aplocal_story.asp?category=6420&slug=WA%20Election%20Challenge%20Reform

West Virginia:

West Virginia Provisional Ballots

20. Measure allows voters to ensure provisional ballots were counted, Charleston Gazette (West Virginia), November 6, 2004, Saturday, News; Pg. P6D, 905 words, Avery Johnson

30. Voters' help box, Charleston Gazette (West Virginia), November 2, 2004, Tuesday, News; Pg. P1C, 390 words

33. Information for voters on election day, The Associated Press State & Local Wire, October 29, 2004, Friday, BC cycle, Political News, 776 words, By The Associated Press

Wisconsin:

Wisconsin Provisional Ballots

14. Reforming elections, Milwaukee Journal Sentinel (Wisconsin), November 14, 2004 Sunday, Final Edition, J Crossroads; Pg. 4, 555 words, STANFORD, Staff, Milwaukee Journal Sentinel

27. WHAT ARE PROVISIONAL BALLOTS?, Wisconsin State Journal (Madison, Wisconsin), November 3, 2004 Wednesday, FOURTH EDITION, FRONT; Pg. A9, 152 words

29. ELECTION 2004 All you need to know to make your vote count, Milwaukee Journal Sentinel (Wisconsin), November 2, 2004 Tuesday, Final Edition, B News; Pg. 1, 959 words, TOM KERTSCHER, Journal Sentinel, Milwaukee Journal Sentinel

30. Protect voter rights today, Milwaukee Journal Sentinel (Wisconsin), November 2, 2004 Tuesday, Final Edition, A News; Pg. 14, 730 words, STANFORD, Staff, Milwaukee Journal Sentinel

33. PROVISIONAL VOTES NOT SEEN AS PROBLEM, Wisconsin State Journal (Madison, Wisconsin), October 31, 2004 Sunday, ALL EDITION, LOCAL/WISCONSIN; Pg. D2, 366 words, Elizabeth Wachowski Wisconsin State Journal

42. Provisional ballots will allow new voters without identification to vote, Milwaukee Journal Sentinel (Wisconsin), October 5, 2004 Tuesday, Final Edition, B News; Pg. 7, 373 words, MEG JONES, Journal Sentinel, Milwaukee Journal Sentinel

Wyoming:

Wyoming Provisional Ballots

5. Trend: Less than half likely to vote in Wyoming primary, The Associated Press State & Local Wire, August 15, 2004, Sunday, BC cycle, State and Regional, 628 words, By ROBERT W. BLACK, Associated Press Writer, CHEYENNE, Wyo.

State Elections Websites Consulted

http://www.sos.state.al.us/election/index.cfm
http://ltgov.state.ak.us/elections/
http://www.azsos.gov/
http://www.sosweb.state.ar.us/elections.html
http://www.ss.ca.gov/elections/elections.htm
http://www.sos.state.co.us/pubs/elections/main.htm
http://www.sots.state.ct.us/ElectionsDivision/Electionindex.html
http://www.state.de.us/election/
http://www.dcboee.org/

http://election.dos.state.fl.us/
http://www.sos.state.ga.us/elections/default.htm
http://www.hawaii.gov/elections
http://www.idahovotes.gov/
http://www.elections.state.il.us/
http://www.state.in.us/sos/elections/index.html
http://www.sos.state.ia.us/elections/index.html
http://www.kssos.org/elections/elections.html
http://sos.ky.gov/elections/
http://www.sec.state.la.us/elections/elections-index.htm
http://www.maine.gov/sos/cec/elec/
http://www.elections.state.md.us/
http://www.sec.state.ma.us/ele/eleidx.htm
http://michigan.gov/sos/0,1607,7-127-1633---,00.html
http://www.sos.state.mn.us/election/index.html
http://www.sos.state.ms.us/elections/elections.asp
http://www.sos.mo.gov/elections/
http://sos.state.mt.us/css/ELB/Contents.asp
http://www.sos.state.ne.us/elec/
http://secretaryofstate.biz/nvelection/index.htm
http://www.sos.nh.gov/electionsnew.htm
http://www.state.nj.us/lps/elections/electionshome.html
http://www.sos.state.nm.us/
http://www.elections.state.ny.us/portal/page?_pageid=153,42096,153_53293&_dad=portal&_schema=PORTAL
http://www.sboe.state.nc.us/
http://www.state.nd.us/sec/electvote/
http://www.sos.state.oh.us/sos/elections/index.html
http://www.oklaosf.state.ok.us/~elections/
http://www.oregonvotes.org/
http://www.dos.state.pa.us/bcel/site/default.asp
http://www.sec.state.ri.us/elections
http://www.state.sc.us/scsec/
http://www.sdsos.gov/elections/
http://www.state.tn.us/sos/election/index.htm
http://www.sos.state.tx.us/elections/index.shtml
http://www.voterlink.utah.gov/
http://vermont-elections.org/soshome.htm
http://www.sbe.state.va.us/
http://www.secstate.wa.gov/elections/
http://www.wvsos.org/elections/main.htm
http://elections.state.wi.us/
http://soswy.state.wy.us/election/election.htm

Jeannie Layson/EAC/GOV
12/11/2006 09:18 AM

To klynndyson@eac.gov
cc dscott@eac.gov, bolu@eac.gov, ggilmour@eac.gov
bcc
Subject Brennan Center FOIA request

Karen,
I still do not have the RFPs we received for the voter fraud/ID project. I need that information ASAP. I this was a sole source contract and there were no other RFPs received, please indicate this in your reply. Please see language from original request below:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Jeannie Layson
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Phone: 202-566-3100
www.eac.gov

Gracia Hillman/EAC/GOV
03/16/2007 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
cc Jeannie Layson/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, rosemaryrod2003
bcc Karen Lynn-Dyson/EAC/GOV
Subject Re: Voter ID statement

History: This message has been replied to.

Why is it that Karen is not in the email loop on this circulation?

Sent from my BlackBerry Wireless Handheld
Juliet E. Hodgkins
----- Original Message -----

From: Juliet E. Hodgkins
Sent: 03/16/2007 09:41 AM EDT
To: [redacted] Gracia Hillman; Caroline Hunter;
Cc: Thomas Wilkey; Jeannie Layson
Subject: Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Gracia Hillman/EAC/GOV]
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Gracia Hillman/EAC/GOV]

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Juliet E. Hodgkins/EAC/GOV
03/16/2007 01:38 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Fw: Voter ID statement

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 03/16/2007 01:36 PM -----

Juliet E. Hodgkins/EAC/GOV
03/16/2007 09:41 AM

To Donetta Davidson, Gracia Hillman, Caroline C. Hunter/EAC/GOV, Rosemary Rodriguez
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov
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EAC Statement on Future Study of Voter Identification Requirements

Background

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The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

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EAC will undertake the following activities:

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"John Weingart"
<Johnwein@rci.rutgers.edu>
03/16/2007 03:30 PM
Please respond to
John.Weingart@rutgers.edu

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, [redacted] twilkey@eac.gov, jhodgkins@eac.gov
bcc
Subject Re:Review of Voter ID Statement

History: This message has been replied to.

Karen - I believe that both Tom and I had let you know to expect our comments today. In any case, they are attached. If they raise any questions, don't hesitate to contact me today at (609)397-8030 or next week at my office. Thanks, John

> John-
>
> EAC staff has asked when we can expect your approval of the statement
> which I sent several days ago and asked for by COB today.
>
> As I am leaving the office early today, could you be certain that Tom
> Wilkey and Julie Hodgkins are sent your response, as well as myself?
>
> Thanks
> Karen
>
>
>
> Karen Lynn-Dyson
> Research Director
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>

--
John Weingart, Associate Director
Eagleton Institute of Politics

(732) 932-9384, x.290 EACSummary31507a.doc

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Comment [MSOffice1]: Some states compare signatures. Our base case was giving name –either orally or by signing without any attempt to verify the signature. "Give" is therefore a more precise word here than "sign."

Footnotes:

1. In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked a photo ID to vote a regular ballot by swearing an affidavit.

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---

[1]
[2]
[3]

"Rosemary Rodriguez"
[redacted]

03/19/2007 10:56 AM

To jhodgkins@eac.gov, "Davidson, Donetta" <ddavidson@eac.gov>, ghillman@eac.gov, chunter@eac.gov

cc twilkey@eac.gov, jlayson@eac.gov, klynndyson@eac.gov

bcc

Subject Re: Revised Voter ID statement with Eagleton comments to paragraph 2

Several thoughts on formatting:

Does the title of the document still work?

I still think that the two paragraphs, the one that precedes the Julie paragraph and the one that follows, should be set apart and titled "conclusion" or "finding" or something that recognizes it was the subject of an action by the EAC.

and then i ask if the title of the next section still works--do we make recommendations to ourselves?

----- Original Message ----
From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>
To: "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov; chunter@eac.gov; rosemaryrod2003@yahoo.com
Cc: twilkey@eac.gov; jlayson@eac.gov; klynndyson@eac.gov
Sent: Friday, March 16, 2007 4:27:32 PM
Subject: Revised Voter ID statement with Eagleton comments to paragraph 2

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Juliet E. Hodgkins/EAC/GOV
03/16/2007 04:27 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, [redacted]
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
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Gracia Hillman/EAC/GOV
03/19/2007 03:58 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC,
bcc
Subject Re: Revised Voter ID statement with Eagleton comments to paragraph 2

I think Comm Rodriquez makes a good point about the document needing a different title. Also, it is my understanding that Jeannie has not yet edited the draft and therefore has not yet considered layout, subtitles, typos, etc.

I have raised three concerns/questions in Footnotes 2 and 4 and in the bullet that address the working group meeting.

Lastly, I have lost track of where we are with consideration of releasing the full report. The draft document does not do that, however I thought there was a suggestion that we should consider releasing the full report?

Voter ID edited 31507- changes accepted with Eagleton comments.doc

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document[1] was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates[2] and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.[3]
The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

Comment [GH1]: In Footnote #2 Regarding the estimate of non-citizens. Perhaps this could be clarified to say whether the % of non-citizens was in the VAP or of the US population as whole. It is not clear to me

EAC Recommendations for further study and next steps

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[1] In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

[2] The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

[3] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.[4] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

Comment [GH2]: There is no page 109 in the Eagleton Testimony that was presented on 2/8/07 so I am not clear what document the public is being directed to see.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

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[4] See EAC Public Testimony, February 8, 2007, page 109.

- Convene, by mid 2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

Comment [GH3]: Is it realistic that this meeting will be convened by June 30? Perhaps we should say, "Convene in 2007, a working"

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Juliet E. Hodgkins/EAC/GOV
03/20/2007 11:05 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject I don't know the answer to this

Karen,

Please see the remaining comment from Commissioner Hillman in the text of the attached document. I don't know how to answer this. Please advise.

Voter ID edited 32007- changes accepted with Eagleton comments.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

EAC Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document[1] was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates[2] and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.[3]
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Comment [GH1]: In Footnote #2 Regarding the estimate of non-citizens. Perhaps this could be clarified to say whether the % of non-citizens was in the VAP or of the US population as whole. It is not clear to me.

EAC Declines to Adopt Draft Report

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the

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[1] In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

[2] The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

[3] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.[4] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

Further EAC Study on Voter Identification Requirements

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

---

[4] See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

"John Weingart"
<john.weingart@rutgers.edu>
03/20/2007 02:44 PM

To klynndyson@eac.gov
cc jhodgkins@eac.gov, [redacted]
twilkey@eac.gov, "Tim Vercellotti" <tim.vercellotti@rutgers.edu>
bcc
Subject Re: Review of Voter ID Statement

History: This message has been replied to.

Karen:

The estimate of citizens of voting-age population controls for the percentage of the voting-age population that might have been non-citizens in 2004. We calculated the citizens of voting-age population using the following approach (this is a direct quote from Appendix C to our final Voter Identification report to the EAC):

"In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000."

I hope this addresses the issue. If it doesn't, let us know and Tim Vercellotti
or I will be happy to elaborate.

Thanks,

John

lynndyson@eac.gov wrote:

>
> Quick question related to The Voting Age Population estimates used to
> estimate/calculate turnout rates (see footnote 2 in the statement)-
>
> When taking into account noncitizens in the calculation were the
> noncitizens considered as part of the VAP or as the population as a
> whole?
>
>
> Thanks for clarifying this for me.
>
> Regards-
>
>

> Karen Lynn-Dyson
> Research Director
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Rosemary E. Rodriguez/EAC/GOV
03/21/2007 04:14 PM

To klynn-dyson@eac.gov
cc
bcc
Subject questions

History: This message has been replied to.

Did the Commission ever meet with Eagleton and ask for an explanation of the methodology--would that have been appropriate?

Rosemary E. Rodriguez
Commissioner
United States Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, D.C. 20005
Telephone: 202-566-3104
Facsimile: 202-566-3127
www.eac.gov
rrodriguez@eac.gov

Caroline C. Hunter/EAC/GOV
03/21/2007 05:26 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Rosemary E.
bcc
Subject Re: One more time

Looks good to me.

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
03/21/2007 05:02 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC
cc jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
Subject One more time

I think that Karen and I have captured all of the changes that needed to be made including answering the question posed by Commissioner Hillman regarding footnote #2.

Please take one final look.

Voter ID edited 32107- with changed footnote.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Caroline C. Hunter/EAC/GOV
03/21/2007 05:26 PM

To Jeannie Layson/EAC/GOV@EAC
cc Bryan Whitener/EAC/GOV@EAC, ddavidson@eac.gov, ghillman@eac.gov, klynndyson@eac.gov, Rosemary E. Rodriguez/EAC/GOV@EAC, twilkey@eac.gov
bcc
Subject Re: FOR YOUR APPROVAL: VoterID Draft Press Release

Please see attached.

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Jeannie Layson/EAC/GOV

03/21/2007 03:48 PM

To ddavidson@eac.gov, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, klynndyson@eac.gov, Bryan Whitener/EAC/GOV@EAC
Subject FOR YOUR APPROVAL: VoterID Draft Press Release

Commissioners,
Attached is a draft press release about Commission actions surrounding the voter ID research. Please get your comments/edits back to me by Friday morning, and let me know if you have any questions. I will coordinate with Karen and Julie regarding its release, and tomorrow I will present you with a recommended strategy for the announcement of your decision. (Of course, it will not go out before the delivery of a related letter.)

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

VoterIDPressReleaseDRAFT.doc VoterID release Hunter edits.doc

Deliberative Process Privilege

EAC Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

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EAC Declines to Adopt Draft Report

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[1] In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.
[2] The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.
[3] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.[4] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

Further EAC Study on Voter Identification Requirements

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

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[4] See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

Deliberative Process Privilege

EAC to Launch Comprehensive Study of Voter ID Laws

Releases Initial Research

For Immediate Release
March 23, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive, multi-year study focused on voter identification laws after concluding that researching only one election cycle was not sufficient to draw any conclusions. The Commission declined to issue a report based upon the initial research conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, but voted to make all of the research available. The information is available at www.eac.gov.

"Many new voter identification laws have been enacted recently, and the Commission began working to determine the impact of these new laws," said EAC Chair Donetta Davidson. "However, after careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle."

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting agenda, transcript, and testimony go to http://www.eac.gov/Public_Meeting_020807.asp.

EAC's future research on this topic will be expanded to include more than one election cycle, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC comprehensive research approach will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
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- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

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EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

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U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

Deliberative Process Privilege

EAC to Launch Comprehensive Study of Voter ID Laws

Deleted: *Releases Initial Research*¶

For Immediate Release
March 23, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive, multi-year study focused on voter identification laws after concluding that researching only one election cycle was not sufficient to draw any conclusions. The Commission declined to adopt the report. The information is available at www.eac.gov.

Comment [C1]: I would add some of the language from the other document on this topic that we already approved. The action we took was to not adopt the report due to our concerns but to release all info to the public – "The Contractor and the EAC agree that the report raises more questions than provides answers.[1] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached."

Deleted: issue a report based upon the initial research conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, but voted to make all of the research available.

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- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification

Comment [C2]: A minor change was made in the other document to make this more clear.

provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

# # #

Jeannie Layson/EAC/GOV
03/22/2007 10:59 AM

To ghillman@eac.gov
cc klynndyson@eac.gov
bcc
Subject Project allotments

Commissioner,
Per your question about how much of the contract was actually spent on voter ID research vs provisional voting... I have yet to find the answer. I have reviewed the RFP and the invoices, but so far, it does not appear that these tasks were tracked separately. Karen and I continue to look into this, but I wanted to let you know what we've found so far.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Gracia Hillman/EAC/GOV
03/22/2007 03:29 PM

To Jeannie Layson/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Re: Project allotments

History: This message has been replied to.

How about if we ask Eagleton for an estimate of the percent of costs they would attribute to the Voter ID portion of the study?

That way we can say the Voter ID study cost approximately X dollars.
(And deductively, the Prov Vote study cost X dollars.)

Sent from my BlackBerry Wireless Handheld

Jeannie Layson
----- Original Message -----

From: Jeannie Layson
Sent: 03/22/2007 02:23 PM EDT
To: Gracia Hillman
Cc: Karen Lynn-Dyson
Subject: Re: Project allotments

$560,002

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Gracia Hillman/EAC/GOV

Gracia Hillman/EAC/GOV
03/22/2007 01:17 PM

To Jeannie Layson/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC
Subject Re: Project allotments

What is the (total) dollar amount of the contract?

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Jeannie Layson
Sent: 03/22/2007 10:59 AM EDT
To: Gracia Hillman
Cc: Karen Lynn-Dyson

Subject: Project allotments

Commissioner,
Per your question about how much of the contract was actually spent on voter ID research vs provisional voting... I have yet to find the answer. I have reviewed the RFP and the invoices, but so far, it does not appear that these tasks were tracked separately. Karen and I continue to look into this, but I wanted to let you know what we've found so far.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
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Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Jeannie Layson/EAC/GOV
03/22/2007 05:57 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: Project allotments

I think so, but let's check w/Julie first to make sure that's appropriate.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Karen Lynn-Dyson
Sent: 03/22/2007 05:38 PM EDT
To: Jeannie Layson
Cc: Gracia Hillman; Jeannie Layson
Subject: Re: Project allotments

Jeannie-

Shall I go ahead and call John Weingart and ask him for an estimate of what they spent on each?

Happy to do so tomorrow.

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Jeannie Layson/EAC/GOV

03/22/2007 05:10 PM

To Gracia Hillman/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
cc "Jeannie Layson" <jlayson@eac.gov>
Subject Re: Project allotmentsLink

No, that has not been said publically. But in anticipation of it being asked, I want to make sure we have the facts straight.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Gracia Hillman
Sent: 03/22/2007 05:06 PM EDT
To: Karen Lynn-Dyson
Cc: Jeannie Layson
Subject: Re: Project allotments

Well, I certainly wouldn't want us to do anything inappropriate. And I don't know the regs and rules on what we can and cannot ask.

What do you suppose the problem might be with our asking that question?

We received 2 distinct products and we find that it would be helpful for us to know what we spent on each effort. We aren't questioning their record keeping, we aren't asking them to reconstruct or research their records, we aren't asking them for an itemization, just an estimate.

The problem is that EAC is saying we spent 500 thou on the Voter ID study. That is wrong info. We need to stop saying that and I hope that has not been said publically, otherwise we need to correct the record ASAP.

And we also did not spend 500 thou on the Provisional Voting study. So, I guess we just have to say we spent 500 thou for both and when asked what we spent for one, we say we don't know. ??

Sent from my BlackBerry Wireless Handheld

Gracia Hillman/EAC/GOV
03/22/2007 05:06 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Jeannie Layson/EAC/GOV@EAC
bcc
Subject Re: Project allotments

Well, I certainly wouldn't want us to do anything inappropriate. And I don't know the regs and rules on what we can and cannot ask.

What do you suppose the problem might be with our asking that question?

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And we also did not spend 500 thou on the Provisional Voting study. So, I guess we just have to say we spent 500 thou for both and when asked what we spent for one, we say we don't know. ??

Sent from my BlackBerry Wireless Handheld

Gracia Hillman/EAC/GOV
03/26/2007 05:02 PM

To Jeannie Layson/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, Ddavidson@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, klynndyson@eac.gov, rosemaryrod2003@yahoo.com, Thomas R.
bcc
Subject Re: FOR YOUR APPROVAL: VoterID Draft Press Release

I agree that 2007-2009 can be described as multi-year however, I think that multi-year sounds like we will study 2006, 2008 and 2010, or something extravagant like that.

I think I would be more comfortable if we quantified the timeline so it doesn't sound like the study is open ended and that we are punting on this.

"Rosemary Rodriguez"
[redacted]

03/27/2007 02:20 PM

To jlayson@eac.gov, ddavidson@eac.gov, chunter@eac.gov, ghillman@eac.gov, rrodriguez@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov, bwhitener@eac.gov, ekuala@eac.gov, [redacted], sbanks@eac.gov,
bcc
Subject Re: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

I think we should be prepared to answer a question that may go something like: *What are your specific objections/concerns with the methodologies utilized by Eagleton?*

----- Original Message ----
From: "jlayson@eac.gov" <jlayson@eac.gov>
To: ddavidson@eac.gov; [redacted]; chunter@eac.gov; ghillman@eac.gov
Cc: twilkey@eac.gov; klynndyson@eac.gov; jthompson@eac.gov; bwhitener@eac.gov; ekuala@eac.gov; [redacted]; sbanks@eac.gov; bbenavides@eac.gov
Sent: Tuesday, March 27, 2007 2:02:01 PM
Subject: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,
I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the $500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Jeannie Layson/EAC/GOV
03/27/2007 02:02 PM

To ddavidson@eac.gov, [redacted]
Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov, bwhitener@eac.gov, Elieen L. Kuala/EAC/GOV@EAC, [redacted]
bcc
Subject FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

History: This message has been replied to.

Commissioners,
I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the $500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100

www.eac.gov VoterIDRollOutProposal REV.doc VoterIDTallyVotePRDRAFT3-27.doc

March 27, 2007

MEMORANDUM

To: Commissioners Davidson, Rodriguez, Hunter and Hillman
Fr: Jeannie Layson
Cc: Tom Wilkey, Julie Hodgkins, Karen Lynn-Dyson, Bryan Whitener
RE: Communications Strategy for Release of Voter ID Tally Vote Results

In anticipation of the release of the results of the tally vote and all of the information provided by the contractor, I suggest taking the following steps to effectively communicate your decision. Taking this approach will help us control how the information is distributed, how it is framed, and how to focus the discussion on the positive outcome of your decision.

The bottom line is that we want to try our best to make this a story about EAC's decision to conduct a thorough and in-depth look into the subject of voter ID, and we have decided to release the preliminary research. We do not want this to evolve into a storyline about squabbling between EAC and Eagleton.

I have provided a suggested overall message that reflects the action taken, as well as questions we should be prepared to answer.

Please let me know if you have any questions about my proposal, and I look forward to your input.

PRELIMINARY ACTIVIES

Prior to the completion of the tally vote and the subsequent release of the results and the contractor's materials, I suggest taking the following steps:

1. Discuss EAC's decision with the contractors in advance of distributing the press release and discussions with reporters so that they have an opportunity to respond and also so they will be well informed and prepared to discuss the facts with reporters or others who will most likely contact them.
2. Prior to release of EAC's decision, reach out to key Hill staffers who have been following this issue, including those members who have requested this data in the past. This should include staffers for the House Appropriations Committee Subcommittee on Financial Services and General Government since the Committee requested this information a few weeks ago. It should be made clear to committee staffers that the tally vote is the culmination of a directive made by the EAC chair in Feb. that the agency move forward to complete this project. These staffers should also be included on our list of key stakeholders.
3. Executive director should determine whether there are other key stakeholders that should be made aware of this decision from EAC personally, not from a press release. Possible candidates include members of Congress, NASS, individual secretaries of state, DOJ, and NASED.

PUBLIC ROLL-OUT

Once the above preliminary steps have been completed, EAC Communications will:

1. Post the press release and the related data on the website, with a link from the home page.
2. Prior to release of the tally vote decision and related data, call Richard Whitt of USA Today, Will Lester of AP, Chris Drew of the NYT, and Zach Goldfarb of the WaPo and let them know we are about to release the information. Offer interviews with the chair or other commissioners.
3. Send the press release (with a link to the research) to all recipients in the media database. This includes national dailies, as well as wire services such as the Associated Press.
4. Send the press release (with a link to the research) to all recipients in the stakeholder database. The database consists of election officials, advocates, and other interested parties, including representatives from organizations who have been critical of EAC, including VoteTrust USA and the People for the American Way.

OVERALL MESSAGE

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, was insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors including, the many changes in state laws and regulations that have occurred since the 2004.

Q&A

We should be prepared to answer the following questions:

Q: Why not release the draft fraud report, too?
A: EAC issued a final Voting Fraud and Voter Intimidation Report in December 2006, which included recommendations adopted by the Commission to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

In the case of the voter ID report, the Commission chose not to adopt a final report because it was determined that there was insufficient data to provide meaningful conclusions.

Q: You cited concerns with the contractor's methodology and analysis. Didn't your contract with Eagleton include specific language regarding these issues?
A: Yes, but in retrospect, perhaps we could have done a better job articulating how we wanted this research to be conducted.

Q: During the course of the project, did you see draft reports? If so, why didn't these concerns get addressed at that time?
A: We did receive progress reports, and when we identified areas of concern, we discussed it with the contractor. It was because of these concerns that EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: During the course of the contract, did you ever express these concerns with Eagleton?
A: Yes, and as a result of these conversations, EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: You spent more than $500,000 for a report the Commission doesn't think should be adopted – so basically you're flushing a lot of money down the drain. Is this a wise use of taxpayer dollars?
A: There is value in what Eagleton provided, and this included work they did for us regarding provisional voting. As a result of the research on provisional voting, EAC

issued a set of best practices last fall. The voter ID data will help provide a baseline for how to move forward. And even though their research raised many questions, contemplating the answers to those questions has informed us on how to move forward.

Q: If you were not satisfied with the final product, why did you pay for it?
A: We adhered to the terms of the contract.

Q: EAC received this data in June of last year. What has taken so long to bring it to a conclusion?
A: This is an important issue, one that deserves careful deliberation and a thorough approach. Yes, we like to get things done quickly, but it is more important to take the time to get things right.

TRANSITION PHRASES

To stay on message and avoid being dragged into discussions about anything other than the action taken, employ the following phrases and transition back to the overall message.

Overall Message

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, were insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors, including the many changes in state laws and regulations that have occurred since 2004.

Bridge/Transition Phrases

- What's really important here...
- The bottom line is...
- The point is...
- We have a responsibility to...
- I'll let others speak to that, but let me tell you what's important to EAC...
- Everyone agrees that...

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

EAC to Launch Comprehensive Study of Voter ID Laws

For Immediate Release
DATE, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws. The initial research on voter identification laws are available at www.eac.gov, but because this research focused exclusively on the 2004 general elections, included populations that are not eligible to vote, and did not take into account influential factors such as the competitiveness of campaigns, it was insufficient to provide meaningful conclusions and thus the Commission declined to adopt a report based on it.

"New voter identification laws have been enacted recently, and the Commission began working to determine the possible impact of these new laws," said EAC Chair Donetta Davidson. "After careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle. The bottom line is that the research raises more questions than provides answers.

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007, public meeting. For more information about the public meeting agenda, transcript, and testimony go to http://www.eac.gov/Public_Meeting_020807.asp.

EAC's future research on this topic will be expanded to include more than one election cycle and to examine environmental and political factors and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements that require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identity.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information already collected as well as additional data from the states to develop this baseline.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

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###

Jeannie Layson/EAC/GOV
03/27/2007 03:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

That would be awesome!

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
03/27/2007 02:40 PM

To Jeannie Layson/EAC/GOV@EAC
cc
Subject Re: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Let me know if you need langauge about our methodological concerns. Happy to help draft some

----
Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Jeannie Layson
Sent: 03/27/2007 02:02 PM EDT
To: Donetta Davidson; rosemaryrod2003@yahoo.com; Caroline Hunter; Gracia Hillman
Cc: Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins; Bryan Whitener; Elieen Kuala; [redacted]; Sheila Banks; Bert Benavides
Subject: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,
I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the $500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

Deliberative Process Privilege

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Juliet E. Hodgkins/EAC/GOV
03/28/2007 06:19 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, jlayson@eac.gov
bcc
Subject Comments on Eagleton's response

Karen will present our discussion and conclusions tomorrow. However, when we left the briefing, I think everyone believed that I would provide comments since I will not be able to be on the phone. As such, I am transmitting my comments through this email. I will respond or address Eagleton's numbered paragraphs (note that there is no paragraph 4).

1. There is no need to address this as Eagleton agrees that they only reviewed one election's statistics. The statement of work for the contract told them to review the status of the law in 2004, but in no way limited their analysis to a single year.

2. I believe that Eagleton's issue here is one of semantics. They don't like the phraseology of this sentence. However, the sentence is true and is demonstrated by the sentenced in paragraph 2 of the statement that they reviewed and to which they provided comments. That paragraph specifically contains the following information: "Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates(FN2) and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.(FN3)" Eagleton made two sets of comments to Footnote 2, which is imbedded in the sentence that was just quoted. They explained their methodology in those comments and that methodology was captured in footnote 2. That footnote specifically contains the following sentences: "These data did not differentiate between citizens and non-citizens;... Thus, 2004 estimates of voting age population include person who are not registered to vote."

3. Eagleton objects to the use of the word "so" in the second sentence. They believe that this creates an inference that they only used the second set of data because the first did not show significant correlations. While generally speaking, I believe that this inference is at least partially true, since researchers are always searching for a set of data that will show a statistically significant correlation and will proceed to a different set of data if the first does not show it, it is not the intended inference of these two sentences. The point is to show that of the two data sets that they used one showed no significant correlation and the second showed some correlations (however not all variables showed correlation). And, that the second set of data -- the one that showed correlation was questionable because of the unusually high turnout rate that was reported. As such, we have agreed to remove the words "so" at the beginning of the second sentence and "only" in the middle of the second sentence -- see #9).

4. There is no number 4.

5. I believe that the statement as contained in the EAC statement is TRUE. Stating one's name is not an independently verifiable form of identification, and I think those are the forms of identification that we are talking about. I can walk into any polling place in the country and state the name of any person. Unless the poll worker knows me or knows the person whose name I have used, there is no way to independently verify whether my statement is true. Conversely, my signature can be compared, my address can be verified, or my driver's license can be scrutinized to determine if I am the person that I purport to be. While it is true that I identify myself on the phone or in person all the time by stating my name, it is not for the purpose of determining my eligibility to vote in a particular precinct, etc. I believe that when the term identification is used in the context of voting that it must mean that the voter provides some independently verifiable form of identification. Having said this, I understand that this may be a point of disagreement for others. But, as for me, this statement is true.

6. Based on conversations with Karen concerning the two groups-- one assembled by Eagleton and one assembled by EAC -- both "questioned" the methodology and statistical analysis employed by Eagleton.

The group assembled by Eagleton was referred to by them in their report as their "peer review group." Karen feels that "working group" is not an accurate description of the group assembled by EAC, so she has language to use to replace "independent working group" that captures the essence of that group.

7. See response to #2, above.

8. See response to #1, above.

9. See response to #3, above.

10. See response to #6, above.

11. I believe that the Commission must act on this report. Merely stating what we will do in the future will not distance us from this work and will result in media and others quoting Eagleton's work as an "EAC" report. It has been my understanding that the consensus of the group is to "decline to adopt." I believe that this is the right action.

My flight departs at 9:20 a.m. (EDT) and I do not arrive until 12:15 p.m. (EDT). However, if you have questions concerning my comments, I will be around tonight and will be available tomorrow afternoon by Blackberry.

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Jeannie Layson/EAC/GOV
03/29/2007 11:54 AM

To dsmith@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov
bcc
Subject Fw: Statement for your review /edit

DeAnna,
Per Tom, please circulate the following docs for a tally vote. Thanks.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

----- Forwarded by Jeannie Layson/EAC/GOV on 03/29/2007 11:55 AM -----
Thomas R. Wilkey/EAC/GOV

03/29/2007 11:46 AM

To jlayson@eac.gov
cc klynndyson@eac.com
Subject Statement for your review /edit

Jeannie-

I'm sitting at Tom's desk -

Please edit and review the attached statements to send on to DeAnna for the Tally vote.

Thanks

Tom (and K)

Deliberative Process
Privilege

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone

TWilkey@eac.gov

memo to commissioners on voter id issue.doc Voter ID Statement329.doc

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

MEMORANDUM

TO: Commissioners Davidson, Hillman, Hunter, and Rodgriguez

FROM: Thomas R. Wilkey
Executive Director

DATE: March 29, 2007

RE: Draft Voter Identification Report, Research and Future Study of Voter Identification Requirements

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

I recommend approval of this statement.

EAC Statement on Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document[1] was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates[2] and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.[3]

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Declines to Adopt Draft Report

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[3] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.[4] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

Further EAC Study on Voter Identification Requirements

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

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- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Jeannie Layson/EAC/GOV
03/29/2007 12:50 PM

To ddavidson@eac.gov, [redacted], Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov, Elieen L. Kuala/EAC/GOV@EAC, [redacted], sbanks@eac.gov, Bert A.
bcc
Subject FOR YOUR APPROVAL: VoterID press release and Q&A

Commissioners,
Based upon the revised tally vote language, I have made edits to the press release and to the Q&A. Please let me know if you have any edits. I plan to release this tomorrow if the tally vote is completed by then. Also, please pay special attention to the following answer I have composed, which is in the Q&A document. I will notify you before issuing the press release.

Q: What are your specific objections/concerns with the methodologies utilized by Eagleton?
A: First of all, we agree with the contractor that we should examine more than one federal election. Regarding the methodologies, the contractor conducted two analyses that had different outcomes. The first analysis showed no statistically significant correlations. The second analysis, based on statistics from the Current Population Survey, showed some evidence of a correlation. Also, the categorization of voter identification requirements included classifications that do not require identification documentation, such as "state your name." The bottom line is that the research produced more questions than answers, and that's why EAC is expanding its efforts to examine this important issue.

Jeannie Layson
U.S. Election Assistance Commission
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Phone: 202-566-3100
www.eac.gov EAGLETONQ&A.doc VoterID release 3-30-07.doc

OVERALL MESSAGE

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The preliminary research focused exclusively on the 2004 election, was insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors including, the many changes in state laws and regulations that have occurred since the 2004.

Q&A

Q: Why not release the draft fraud report, too?
A: EAC issued a final Voting Fraud and Voter Intimidation Report in December 2006, which included recommendations adopted by the Commission to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

In the case of the voter ID report, the Commission chose not to adopt a final report because it was determined that there was insufficient data to provide meaningful conclusions.

Q: You cited concerns with the contractor's methodology and analysis. Didn't your contract with Eagleton include specific language regarding these issues?
A: Yes, but in retrospect, perhaps we could have done a better job articulating how we wanted this research to be conducted.

Q: What are your specific objections/concerns with the methodologies utilized by Eagleton?
A: First of all, we agree with the contractor that we should examine more than one federal election. Regarding the methodologies, the contractor conducted two analyses that had different outcomes. The first analysis showed no statistically significant correlations. The second analysis, based on statistics from the Current Population Survey, showed some evidence of a correlation. Also, the categorization of voter identification requirements included classifications that do not require identification documentation, such as "state your name." The bottom line is that the research produced more questions than answers, and that's why EAC is expanding its efforts to examine this important issue.

Q: During the course of the project, did you see draft reports? If so, why didn't these concerns get addressed at that time?
A: We did receive progress reports, and when we identified areas of concern, we discussed it with the contractor. It was because of these concerns that EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: During the course of the contract, did you ever express these concerns with Eagleton?
A: Yes, and as a result of these conversations, EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: You spent more than $500,000 for a report the Commission doesn't think should be adopted – so basically you're flushing a lot of money down the drain. Is this a wise use of taxpayer dollars?
A: There is value in what Eagleton provided, and this included work they did for us regarding provisional voting. As a result of the research on provisional voting, EAC issued a set of best practices last fall. The voter ID data will help provide a baseline for how to move forward. And even though their research raised many questions, contemplating the answers to those questions has informed us on how to move forward.

Q: If you were not satisfied with the final product, why did you pay for it?
A: We adhered to the terms of the contract.

Q: EAC received this data in June of last year. What has taken so long to bring it to a conclusion?
A: This is an important issue, one that deserves careful deliberation and a thorough approach. Yes, we like to get things done quickly, but it is more important to take the time to get things right.

TRANSITION PHRASES

To stay on message and avoid being dragged into discussions about anything other than the action taken, employ the following phrases and transition back to the overall message.

Overall Message

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

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Bridge/Transition Phrases

- What's really important here…
- We are focused on moving forward, not going back…
- The bottom line is…
- The point is…
- We have a responsibility to…
- I'll let others speak to that, but let me tell you what's important to EAC…
- Everyone agrees that…

Deliberative Process Privilege

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

EAC to Launch Comprehensive Study of Voter ID Laws

For Immediate Release
March 30, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws after concluding that initial research focusing on only one election cycle was not sufficient to draw any conclusions. The Commission declined to adopt the report, but is releasing all of the data to the public. The information is available at www.eac.gov, and the Commission's statement regarding its decision is attached.

"After careful consideration of the initial research, the Commission decided this important issue deserves a more in-depth research approach, and that it should be examined beyond only one election cycle," said EAC Chair Donetta Davidson. "The Commission and our contractor agree that the research raises more questions than provides answers."

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting, including the agenda, transcript, and testimony go to http://www.eac.gov/Public_Meeting_020807.asp.

EAC's future research on this topic will be expanded to include more than one federal election, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements.

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EAC Statement on Study of Voter Identification Requirements

Background

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Gracia Hillman/EAC/GOV
03/29/2007 04:10 PM

To Jeannie Layson/EAC/GOV@EAC
cc Ddavidson@eac.gov, Caroline C. Hunter/EAC/GOV@EAC, rrodriguez@eac.gov, jthompson@eac.gov, klynndyson@eac.gov, twilkey@eac.gov
bcc
Subject Re: FOR YOUR APPROVAL: VoterID press release and Q&A

I offer edits to the release (see attached).. My one question is, despite the fact that we are not adopting the report, will the contractor be further offended that we did not name them in the release as having conducted the study??

I have run out of time today to look at the Q&A. I will try to respond by tomorrow morning but don't know if I can.

VoterID release 3-30-07.doc

Deliberative Process Privilege

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

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For Immediate Release
March 30, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

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Jeannie Layson/EAC/GOV
03/30/2007 02:04 PM

To ddavidson@eac.gov, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov
bcc
Subject Voter ID update

Commissioners,
The press release, the statement, and the draft report has been posted on our site. The press release is being distributed, and is on the way to all of you and the entire EAC staff. The following activities have occurred:

1. Press release was sent in advance to Eagleton.
2. I called Wendy Weiser of the Brennan Center and sent her the info.
3. I called and sent the info to Ray M. and Paul D.
4. I sent the info to Tom Hicks and Adam A.
5. Tom called Dan Tokaji, Dan Oak, and Rep. Hinchey's office.
6. Karen gave the three EAC experts a heads up.
7. Comm. Rodriguez was interviewed by NPR (the only outlet that showed any interest), as was Eagleton. Eagleton told NPR they are glad we are expanding the scope. Interview will run on affiliates today at approximately 5:44 pm EST.
8. I offered interviews to USA Today, WaPo, NYT, and AP but none were interested.
9. I have kept Eagleton apprised of our activities.

I'll continue to keep you apprised as the day goes on, and please let me know if there's anyone else you'd like me to contact.

Jeannie Layson
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Washington, DC 20005
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JAMES P. MORAN, VIRGINIA
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April 17, 2007

The Honorable Donetta Davidson
Chair
United States Election Assistance Commission
1225 New York Avenue Northwest, Suite 1100
Washington, DC 20005

Dear Chairwoman Davidson:

I am writing to urge the Election Assistance Commission to publicly release the full draft version of its commissioned report on provisional voting. Given the concern by members of this subcommittee, as well as other members of Congress, over the issue of transparency at the EAC, I believe that it is in the best interest of the taxpayers that they be able to see the full draft report on this topic.

As you know, the EAC commissioned a report from the Eagleton Institute of Politics at Rutgers on both voter identification and provisional voting. At some point, these two reports were split from one another. On March 30, 2007, the EAC released the draft report on voter identification, entitled "Best Practices to Improve Voter Identification Requirements."

I was pleased with the positive precedent set by the EAC with the release of the draft report on voter identification. Although I was disappointed that the Commission did not endorse the results of the study, I strongly believe that releasing the full draft helped dispel concerns of transparency and partisanship, and allowed the public at large to help identify areas that need more in depth review. I also believe that you have made the right decision in asking the Inspector General to conduct a review of the Commission's contracting procedures with respect to recent reports. I am hopeful that the review will conclude that greater openness and transparency is of utmost importance.

Given your request to the Inspector General and the recent controversies over the release of the draft voter identification report, as well as the draft voter fraud and intimidation report, it would be in the best interest of the Commission to release the draft report on provisional voting. Releasing the full draft version of this report would help to ensure that the EAC remains a transparent organization and dispel concerns that the Commission has been acting in a partisan manner.

Should the Commission decide not to release the draft report, I would then request an update as to the status of this report, a timeline for its release, as well as any compelling reasons as to why the EAC should deviate from the precedent you have now set. The public deserves the opportunity to decide whether the report is both rigorous and accurate.

As I mentioned in the hearing we held just over a month ago, I strongly believe that the EAC will be one of the most important government entities in the run up to the 2008 elections. It is of vital importance that we ensure that the EAC remains, in appearance and in fact, a bipartisan, independent agency- so that voters and election administrators across the country can trust its efforts to ensure that federal elections are safe, secure, accurate, and fair. Releasing the provisional voting report would go a long way towards that goal, and I look forward to your response.

Sincerely,

José E. Serrano
Chairman, Financial Services and General
Government Appropriations Subcommittee

"Tom O'neill"
[redacted]

05/04/2006 05:00 PM

To klynndyson@eac.gov

cc tokaji.1@osu.edu, foley.33@osu.edu, [redacted], "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu,

bcc

Subject Revised Voter ID Analysis

History: This message has been forwarded.

Karen,

Attached is Tim Vercellotti's Voter ID analysis revised to use Citizen Voting Age population as the base for turnout calculations and to take account of comments or issues raised by the EAC and our Peer Review Group. This draft is for distribution to the reviewers who will meet by teleconference on May 11, at, we understand, 11:30 a.m.

You are receiving this at the same time that it is being distributed to the Eagleton-Moritz team so that the new reviewers will have a week to prepare for our conversation on the 11th. Early next week you will receive a revised summary paper on Voter ID that incorporates the new data and findings in Tim's revised analysis. That too will be for distribution to the new reviewers.

Tom O'Neill

VoterIDAnalysis VercRev0504.doc

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University
May 4, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater for some specific types of requirements. For example, critics argue that requiring voters to produce government-issued photo identification on Election Day is more demanding than, say, requiring that they state their names at the polling place. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I treated the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[2]

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[2] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. I coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the

dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county exerted a positive effect on voter turnout, and the percentage of individuals living below the poverty line had a negative effect. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance ($p = .05$).

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] In addition, adding the interactions to the model resulted in the percentage of Hispanics in the population having a direct and negative effect on turnout. The interactions suggest that voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ($p < 0.005$).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

[Table 3 here]

The effects of the minimum requirements fell short of statistical significance ($p = 0.08$). The battleground state variable continued to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate had no statistically significant effect. As in the maximum identification requirement model, as the percentage of the population that is poor increased, turnout declined. As the percentage of elderly increased, so did turnout. The proportion of African-Americans in the population had a positive effect on turnout, while the percentage of Hispanics did not affect turnout.

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intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.13 [-0.03 (voter id) - 0.13 (Hispanic) + 0.03 (voter id X Hispanic)].

Adding interactive effects to the model resulted in a statistically significant and negative effect of minimum voter identification requirements on turnout. The percentage of Hispanic adults in the county had a significant and negative effect on turnout, and the percentage of individuals below the poverty line continued to have a negative effect. Interactions between the percentages of Hispanics and those below the poverty line and minimum voter identification requirements also were significant. The percentage of African-Americans in the county and the interaction between African-Americans and voter identification requirements were not significant. A chi-square test for the difference in fit between the two models showed that the model with interactions provides a better fit to the data ($p < .025$).

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the demands of voter identification requirements increase, turnout declines. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[5] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[6] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S.

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[5] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[6] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[7] As in the analysis of aggregate data, I coded voter identification requirements for each respondent's state of residence on a scale of one to five, with one representing the least demanding requirement (stating one's name) and five representing the most demanding requirement (photo identification or affidavit).

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes).[8] Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which

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[7] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[8] Asian-Americans are included in the "other non-white races" category. In response to a request from officials at the U.S. Election Assistance Commission who had read an earlier version of this paper and were curious about the experiences of Asian-Americans, I ran models using Asian-Americans as a separate category in addition to the models presented here. Voter identification requirements did not have a statistically significant effect on whether Asian-American voters said they turned out in the 2004 election.

calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[9] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 0.912 for stating one's name to 0.887 for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of .025, or 2.5 percent, across the five types of identification.[10] When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it

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[9] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[10] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest, omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[11] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of Black/Non-Hispanics voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent when the maximum requirement was stating one's name, and the probability dropped 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Breaking down the 18- to 24-year-old age group by race shed additional light on the effects of voter identification requirements on specific groups.

[Table 8 here]

The gap in predicted probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out was 9.2 percent when the identification requirements varied from stating one's name to providing photo identification. The gap was 7.8 percent when taking into account the minimum requirements. The effects of maximum voter identification requirements also were statistically significant for African-Americans in the 18- to 24-year-old age group, with a gap in

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[11] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

the predicted probability of voting of 10.6 percent. Maximum and minimum voter identification requirements were not a significant predictor of voting among Hispanics ages 18 to 24.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[12]

[Table 9 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements). Given that political discourse about voter identification requirements includes concerns about the effects of the requirements on poor and minority voters, I also ran probit analyses for sub-samples of white and minority voters who fell below the poverty line. The voter identification requirements did not exert statistically significant effects on turnout among poor White/Non-Hispanic and Hispanic voters, but did have a significant effect on Black/Non-Hispanic voters who were below the poverty line.[13] Allowing the maximum voting requirement to vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 10 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

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[12] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

[13] The lack of significant effects for poor Hispanic voters is in contrast to the results from the aggregate data analysis. The sub-sample of poor Hispanic voters was small (n = 491), which may have contributed to the lack of statistical significance.

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit. African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters. The effects on African-American voters were pronounced for two specific sub-samples: African-American voters living below the poverty line and those in the 18- to 24-year-old age group. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[14] Or, do the requirements result in some voters

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[14] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not

being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		**Minimum Requirement**	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.6 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.69	0.02
Voter ID requirements	-0.01**	0.003	-0.03**	0.004
Battleground State	0.04*	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.48**	0.03	0.50**	0.03
% African-American	0.05**	0.01	0.06	0.03
% Hispanic	-0.02	0.01	-0.13**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8638.0		-8651.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.63	0.02	0.66	0.02
Voter ID requirements	-0.009	0.005	-0.02**	0.006
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.48**	0.03	0.48**	0.03
% African-American	0.05**	0.01	0.04	0.03
% Hispanic	-0.12	0.01	-0.13**	0.04
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	0.01	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8630.8		-8620.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		**Minimum requirements**	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

$p < .05^*$ $p < .01^{**}$ (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model		
	Maximum requirement	**Minimum requirement**
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White/Non-Hispanic voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.795	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 8. Predicted probability of voter turnout – Age groups by race

	White/Non-Hispanic 18 - 24		Black/Non-Hispanic 18 – 24
	Maximum requirements	**Minimum requirements**	**Maximum requirements**
State name	0.844	0.836	0.899
Sign name	0.823	0.818	0.877
Match signature	0.801	0.799	0.852
Non-photo ID	0.777	0.779	0.824
Photo ID	0.752	----	0.793
Affidavit	----	0.758	----
Total difference -- lowest to highest	0.092	0.078	0.106
N	3,814		562

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Minimum voter identification requirements were not a significant predictor of voting for Black/Non-Hispanic voters ages 18 to 24. Maximum and minimum voter identification requirements were not a significant predictor of voting for Hispanic voters ages 18 to 24.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – Voters above and below the poverty line

	All voters above the poverty line		All voters below the poverty line	Black/Non-Hispanic voters below the poverty line
	Maximum requirement	Minimum requirement	Minimum requirement	Maximum requirement
State name	0.920	0.922	0.784	0.833
Sign name	0.915	0.915	0.772	0.816
Match signature	0.909	0.907	0.758	0.798
Non-photo ID	0.903	0.899	0.745	0.778
Photo ID	0.897	----	----	0.758
Affidavit	----	0.891	0.731	
Total difference from lowest to highest	0.023	0.031	0.053	0.075
N	49,935		5,038	1,204

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for white and Hispanic voters who were below the poverty line. Minimum voter identification requirements were not a significant predictor of voting for Black voters below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 10. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Juliet E. Hodgkins/EAC/GOV
01/30/2007 09:39 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Comments on the Voter ID summary

History: This message has been replied to.

Karen,

Here are some thoughts that I have jotted down concerning the Voter ID summary. Please feel free to contact me with any questions that you have about any of the comments.

EAC Voter ID Report - jth comments.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Deliberative Process Privilege

EAC Report on Voter Identification

Executive Summary

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain minimum requirements concerning voter identificaiton, but also leaves considerable discretion to the States for implementation of voter identification requirements. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

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In May 2005, EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data, aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau, the contractor found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Comment [J1]: Description of what data is included in census data

Comment [J2]: Need a definition of what is statistically significant – both technical and plain language

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;

Comment [J3]: What does this mean?

Comment [J4]: Not sure what this would entail. These are buzz words, but there needs to be some specific meaning assigned to them and communicated with any recommendations

- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

Introduction

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure board access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters -- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

(NEED TO ADD SOME LANGUAGE ABOUT THE TIME FRAME OF THE STUDY – I.E. THAT IT REVIEWED ONLY DATA FROM THE NOVEMBER 2004 ELECTION.)

Methodology of the Study

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

(ADD A TABLE OF THE LAWS FROM EACH STATE)

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

Study Oversight and Methodological Review

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

Comment [J5]: Do we need this section. It seems to suggest that we are adopting the Eagleton report. I am not sure that is where we will end up.

The Eagleton Institute of Politics Peer Review Group

R Michael Alvarez, California Institute of Technology
John C. Harrison, University of Virginia School of Law
Martha E. Kropf, University of Missouri-Kansas City
Daniel H. Lowenstein, University of California at Los Angeles
Timothy G. O'Rourke, Salisbury University
Bradley Smith, Capital University Law School
Tim Storey, National Conference of State Legislatures
Peter G. Verniero, former Attorney General, State of New Jersey

The EAC Peer Review Group

Jonathan Nagler, New York University
Jan Leighley, University of Arizona
Adam Berninsky, Massachusetts Institute of Technology

Summary of the Research

Maximum and Minimum Voter Identification Requirements

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification and, providing a form of photo identification. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the "maximum" requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section–it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

The Relationship of Voter Identification Requirements to Voter Turnout

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-**footnote about how they collected the data)** and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement **(what about affidavit?????).** Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

Aggregate-level statistical analysis

Comment [J6]: We need a simpler version as well as one suited to academics

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements ($r=-.30$, p less than .05). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant ($r=-.20$, $p=.16$). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend was found when analyzing minimum ID requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)

Multivariate models of analysis using aggregate-level data

Comment [J7]: Same as previous comment

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.

- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.

- Voter turnout declined as the percentage of Hispanics in a county's population increased.

- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.

- The percentage of African-Americans in the county did not have a significant effect on turnout.

DO WE HAVE ANY CHARTS/GRAPHS THAT REFLECT THESE?

The Eagleton Institute analysis of minimum voter identification requirements showed that:

Comment [J8]: What does this mean?

- A relationship between minimum voter ID requirements and turnout was not demonstrated.

- Battleground states and those with competitive state races had a significant and positive correlation to turnout.

- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.

- The percentage of Hispanics in the county was associated with reduced turnout.

- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation between maximum voter identification requirements (a signature match and non-photo identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

Comment [J9]: What does this mean?

Multivariate analysis using individual level turnout data

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. **(why is the N is Table 3 54,973?)**

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race **(explain).**
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting **(high income or low income, single, married?),**
- Women were more likely to say they voted than men.

- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.

Analysis of the predicted probability of voter turnout using the individual data

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements **(which ones?)** exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lower turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

Deleted: lover

- The predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state one's name.

Comment [J10]: How was this derived? What was it based on? How were other variables controlled/ What were the other variables?

Comment [J11]: How do these figures compare to the other variables such as a hotly contested race or a "no interest" race.

- Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. African

American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.

- Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, while they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

- For those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

Conclusions from the statistical analysis

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual–level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.

- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.

- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.

- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

Caveats to the Analysis

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot? Knowing more about the "on the ground" experience of voters regarding various identification requirements will guide state and local level policy makers in their efforts to educate voters about the requirements. These experiences could also help instruct poll workers on how to handle questions and possible disputes over voter identification requirements.

Deleted: r

Deleted: election judges

Public Policy and Administrative Considerations

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies the will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and sprit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

Recommendations and Next Steps

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.
- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout
- Alternative forms and methods for verifying a voter's identity.
- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted
- A continuing state-by-state update on changes to voter identification requirements.
- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State

Appendix B: Court Decisions and Literature on Voter Identification and Related Issue Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

Juliet E. Hodgkins/EAC/GOV
01/30/2007 09:48 PM

To "Davidson, Donetta" <ddavidson@eac.gov>
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Questions for the public meeting

History: This message has been replied to.

Donetta,

Below are some questions that I have compiled in reading through the summary that Karen developed. I have not re-evaluated the draft report provided by Eagleton. As soon as I have the opportunity to revisit that document, I will send any additional questions that I would suggest asking.

QUESTIONS FOR EAGLETON:

1. What is meant by "statistically significant"? Please explain in plain language when a result is considered statistically significant. Also, please provide an academic definition of that term. How did you calculate the mean and standard deviations from the mean?
2. What data was used to derive these research findings?
3. Did you attempt to find information or data related to elections prior to 2004 in states that have voter identification requirements?
4. What other variables other than voter identification were tested? Contested race? Historical voter turnout? Weather? Media attention to the area? Candidate activities/campaign?
5. What was the impact (positive or negative) of these other factors on voter turnout?
6. How did you control these variables/factors when measuring the impact of voter ID on voter turnout or on prospective voter turnout? For example, did you only apply the factor to like circumstances – similar historical turnout, same level of contention in the races of the ballot, etc.
7. Would the study and your conclusions have been more reliable if additional data had been analyzed? Data such as voter turn out in states that have had voter ID in past Federal elections?
8. What data did you use to identify voter turnout?
9. What data did you use to identify whether people or groups of people were more or less likely to vote when identification is required?

Why did you use census data as opposed to data on registered voters? Doesn't census data also include information from people who are not registered voters and people who are not even eligible to be registered voters?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
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Washington, DC 20005
(202) 566-3100

Juliet E. Hodgkins/EAC/GOV
02/01/2007 03:29 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject More thoughts on Eagleton draft report

After having read the Eagleton draft report, I have some thoughts and questions:

I am troubled by the concept that Eagleton compared states as if they were equal. They assume that, all factors being equal, that the voter turn out in each state would be equal. I am not at all certain that this is the case. Further, there is no evidence that the staticians actually compared previous years' turnout in the same state to determine whether 2004 was some sort of anomally for that state (high or low). Long story short, I am very skeptical of the data that they used to draw conclusions. We should ask questions about what data they used, how they parsed it, why they used the data, what other data could have been used to provide better, more reliable results.

My second concern is how they (statistically speaking) differentiate between a minimum requirement (i.e. state name, photo i.d., etc) and a maximum requirement (i.e., state name, photo i.d., etc.). It makes no sense to me how they could possibly arrive at a different percentage for these requirement levels.

My third issue is the persistent use of the phrases "ballot access" and "ballot integrity" without some definition or some explanation of what those concepts are.

Juliet Thompson Hodgkins
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Jeannie Layson/EAC/GOV
02/14/2007 03:14 PM

To Bert A. Benavides/EAC/GOV@EAC, sbanks@eac.gov, klynndyson@eac.gov
cc twilkey@eac.gov, jthompson@eac.gov, ggilmour@eac.gov
bcc
Subject Eagleton documents

History: This message has been replied to.

Hello everyone,
I am trying to get my arms around exactly what information from either the Eagleton voter ID or provisional voting report was sent from this office to outside parties. Please note that I have had several FOIA requests for both reports, so I need to know exactly what has been released to make sure that I have responded to these requests accurately. In other words, I want to make sure that I have not refused to provide data or information that has been provided to third parties. If you do not find any records regarding this request, please respond to this email "no records found." Thank you.

Jeannie Layson
U.S. Election Assistance Commission
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Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Jeannie Layson/EAC/GOV
02/21/2007 12:57 PM

To [redacted]
cc
bcc Karen Lynn-Dyson/EAC/GOV
Subject Voter ID

History: This message has been replied to.

Mr. Galloway,
Per your inquiry, we have been working with the Eagleton Institute to study issues related to voter ID. We held a public meeting earlier this month in which we discussed this project to provide an update on progress being made. At the meeting, EAC commissioners asked the researchers questions about what they'd found so far, methodology, etc. At the conclusion of the questions, EAC Chair Donetta Davidson instructed EAC staff to take a look at Eagleton's recommendations for moving forward and w/n 30 days present the commissioners with suggestions for further research about voter ID laws. She noted that she thought it was important to study more than one election cycle, since some of these ID laws are so new. Go here to view the testimony Eagleton presented at the meeting, and go here to read the Eagleton paper, in which they referenced some of the data they had collected on our behalf.

For your information, EAC is an independent bipartisan commission created by HAVA. It is charged with developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting test laboratories, certifying voting systems and serving as a national clearinghouse and resource of information regarding election administration. The Commission is also responsible for auditing the use of HAVA funds.

Let me know if I can be of further assistance. 202-566-3103.

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Gracia Hillman/EAC/GOV
03/06/2007 11:24 AM

To klynn-dyson@eac.gov
cc Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov
bcc
Subject Feedback on Draft Statement

Karen:

Following up on yesterday's briefing about the Draft Statement on the Voter ID study, here is my feedback.

1. I agree that we should send out all of the appendices. I think EAC needs to send out as much information as we have available at this time from the Eagleton study..

2. The statement should clarify that at a minimum we are looking to compare 2008 voter participation stats with the 2004 stats used in the Eagleton report. (FYI - The term voter participation includes registration and turnout.)

Perhaps that explanation should be the fourth paragraph on Page 1, explaining why EAC decided to not perform an analysis at this time of the impact of voter id requirements on turnout.

3. I agree that the last section of the statement should include EAC's intention to convene a (one) large working group of advocates, academics (statisticians included) and election officials to discuss what the next EAC study on this topic should cover and what the time frame for such study should be.

Lastly, I read this as a draft and "assume" it will be edited to take care of grammatical and spelling errors.

Thanks,
Gracia M. Hillman
Commissioner
U.S. Election Assistance Commission
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www.eac.gov

Gracia Hillman/EAC/GOV
03/06/2007 11:28 AM

To klynn-dyson@eac.gov
cc Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov
bcc
Subject Further to the Eagleton Study

I forgot to add the following comment.

If the Eagleton testimony from February 8 is not included as an attachment to our Statement, then at the very least I think our statement should inform the reader that Eagleton testified on Feb 8 and the statement is posted on our website.

Caroline C. Hunter/EAC/GOV
03/07/2007 10:13 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen
bcc
Subject Re: Revised EAC Statement

Thank you, Karen. I believe we are getting closer to a consensus. I have a few comments which I will send to everyone soon.

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
03/07/2007 09:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, "Rosemary Rodriguez" <[redacted]>, twilkey@eac.gov, Gracia Hillman/EAC/GOV@EAC
Subject Re: Revised EAC Statement

Commissioners-

Attached please find the revised EAC Statement on Voter Identification requirements.

I have attempted to craft language that expresses EAC's concern with the statistical analysis and research methodology that Eagleton employed, and to capture the essence of what EAC found problematic with that analysis.

In this draft I have kept the two options as I have not heard which option the Commissioners have chosen (e.g. for the release of all or only part of the Eagleton report)

New EAC Voter ID Report.doc Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Rosemary Rodriguez"
<[redacted]
03/07/2007 09:05 AM

To klynndyson@eac.gov
cc
bcc
Subject Re: Tomorrow's Testimony

thanks.

----- Original Message ----
From: "klynndyson@eac.gov" <klynndyson@eac.gov>
To: ghillman@eac.gov
Cc: chunter@eac.gov; ddavidson@eac.gov; jlayson@eac.gov; jhodgkins@eac.gov; Rosemary Rodriguez <[redacted]>; twilkey@eac.gov
Sent: Tuesday, March 6, 2007 5:51:43 PM
Subject: Re: Tomorrow's Testimony

All-

Commissioner Hunter just stopped by my office and has asked me to insert stronger language into the statement that speaks to EAC's problems with the research and statistical methodology that Eagleton employed. This is language on which she believes she and Commissioner Hillman have been able to agree.

I will draft a sentence or two to this effect and insert it into paragraph four first thing tomorrow morning.

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Gracia Hillman/EAC/GOV
03/06/2007 05:34 PM

To Donetta L. Davidson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC
cc "Rosemary Rodriguez" <rosemaryrod2003@yahoo.com>@GSAEXTERNAL, Caroline C. Hunter/EAC/GOV@EAC, twilkey@eac.gov, Jeannie Layson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
Subject Tomorrow's Testimony Link

"Rosemary Rodriguez"
[redacted]
03/07/2007 11:45 AM

To klynndyson@eac.gov
cc chunter@eac.gov, ddavidson@eac.gov, jlayson@eac.gov, jhodgkins@eac.gov, twilkey@eac.gov, ghillman@eac.gov
bcc
Subject Re: Revised EAC Statement

History: This message has been replied to.

I prefer the second option with respect to release all of the appendices and wish we could reference timing for the convening of the working group but if that is impossible then I guess I will live with that. Also "disclaimer" paragraph re methodology is okay with me.

Is it possible to date or number drafts in the future so that I can keep them straight?

Thanks.

----- Original Message ----
From: "klynndyson@eac.gov" <klynndyson@eac.gov>
To: klynndyson@eac.gov
Cc: chunter@eac.gov; ddavidson@eac.gov; jlayson@eac.gov; jhodgkins@eac.gov; Rosemary Rodriguez <[redacted]>; twilkey@eac.gov; ghillman@eac.gov
Sent: Wednesday, March 7, 2007 9:50:08 AM
Subject: Re: Revised EAC Statement

Commissioners-

Attached please find the revised EAC Statement on Voter Identification requirements.

I have attempted to craft language that expresses EAC's concern with the statistical analysis and research methodology that Eagleton employed, and to capture the essence of what EAC found problematic with that analysis.

In this draft I have kept the two options as I have not heard which option the Commissioners have chosen (e.g. for the release of all or only part of the Eagleton report)

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
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tel:202-566-3123

Gracia Hillman/EAC/GOV
03/07/2007 12:33 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E.
bcc
Subject Re: Revised EAC Statement

History: This message has been replied to.

I have inserted my thoughts and suggested edits to Karen's latest draft -- see tracked changes and comments.

Karen: If there is more back and forth that needs to be discussed on this, it may be best to have a briefing by you later this afternoon that could include commissioners Hunter and Rodriguez.

New EAC Voter ID Report.doc

Gracia M. Hillman
Commissioner
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Gracia Hillman/EAC/GOV
03/13/2007 09:11 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc jlayson@eac.gov
bcc
Subject Re: Next draft of the Voter ID statement

I am comfortable with the latest redraft. However, if there are any changes of substance, even a one word change can be substantive in this document, I will want to see a redraft before it is sent for tally vote.

The statement is well written but there remain some editing issues. Lack of commas, use of the words "which" versus "that." Typo - the word "this" when I think it is supposed to be "his." (I do not consider grammatical and spelling edits as substantive.)

Thanks,

Gracia M. Hillman
Commissioner
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Gracia Hillman/EAC/GOV
03/13/2007 08:55 AM

To Ddavidson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, klynn-dyson@eac.gov, jlayson@eac.gov, Elieen L. Kuala/EAC/GOV@EAC, Bert A.
cc
bcc
Subject My WhereAbouts - FYI

Sheila will be out today and I will get to the office by about 12:00 noon. In the meantime, I am available by phone or blackberry.

Jeannie Layson/EAC/GOV
03/13/2007 09:25 AM

To Gracia Hillman/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Re: Next draft of the Voter ID statement

I am waiting until I get everyone's changes before I review for grammar. I still have not received Comm. Hunter's changes.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
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Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Gracia Hillman/EAC/GOV

Gracia Hillman/EAC/GOV
03/13/2007 08:11 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc jlayson@eac.gov
Subject Re: Next draft of the Voter ID statement

I am comfortable with the latest redraft. However, if there are any changes of substance, even a one word change can be substantive in this document, I will want to see a redraft before it is sent for tally vote.

The statement is well written but there remain some editing issues. Lack of commas, use of the words "which" versus "that." Typo - the word "this" when I think it is supposed to be "his." (I do not consider grammatical and spelling edits as substantive.)

Thanks,

Gracia M. Hillman
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Caroline C. Hunter/EAC/GOV
03/13/2007 04:36 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC,
bcc
Subject Re: Latest draft of the EAC Voter ID statement

History: This message has been replied to.

Attached, please find my edits. My intention was to try to explain in English how the Contractor conducted the study in the 2nd graph of the background statement. I realize I left some information out; for example, how he ran the numbers based on maximum and minimum id requirements. I am open to any suggestions on how to better describe what they did; however, despite reading the report and Appendix C many times, I am still do not understand exactly how the study was conducted. I think we should run the 2nd graph by the Contractor to ensure its accuracy.

VoterID Hunter edits.doc

Caroline C. Hunter
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chunter@eac.gov
www.eac.gov

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
03/09/2007 05:20 PM

To Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, [redacted]
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov
Subject Latest draft of the EAC Voter ID statement

Commissioners-

Commissioner Hunter noted that several changes to the draft that she had recommended were not included in the latest draft that I sent to Julie and Jeannie. had.

Attached please find this new version which I hope accurately reflects her suggestions; we are asking that everyone take a look at this version.

Please get me your comments and recommended edits by Monday.

Thanks-

Deliberative Process
Privilege

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign their name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates[1] and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.[2] The contractor and the EAC agree that the report raises more questions than provides answers.[3]

Deleted: Using two sets of data– aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau– the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.¶

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the

---

[1] The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

[2] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

[3] See EAC Public Testimony, February 8, 2007, page 109.

implementation of voter identification requirements, to be a first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation in turnout rates based on the type of voter identification requirements. EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the report.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Study the effects, including voter turnout, voter registration, and fraud, of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

Deleted: , s

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Voter ID Statement March 9.doc

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation in turnout rates based on the type of voter identification requirements. EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the report.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

"John Weingart"
<john.weingart@rutgers.edu>
03/15/2007 10:38 AM

To klynndyson@eac.gov
cc
bcc
Subject Re: EAC Statement on its future study of Voter ID requirements

Karen - Sorry I missed your call. Just back from vacation but will be touching base with Tom, Tim et al today and will be back to you by tomorrow. Thanks.

dyouklynndyson@eac.gov wrote:

>
> John and Tom-
>
> EAC staff are putting the finishing touches on the statement and data
> it will be releasing, in the next several days, related to voter
> identification study.
>
> In our brief statement we will be summarizing what Rutgers/Eagleton
> did when performing its statistical analysis.
>
> *Could you review the following statement for accuracy and send me any
> revisions and edits to it by Friday March 16, 2007?*
>
> " The Contractor performed a statistical analysis of the relationship
> of various requirements for voter identification to voter turnout in
> the 2004 election. The Contractor compared states with similar voter
> identification requirements and drew conclusions based on comparing
> turnout rates among states for one election- November 2004. For
> example, the turnout rate in 2004 in states with a photo
> identification requirement was compared to the turnout rate in 2004 in
> states with a requirement that voters sign his or her name in order to
> receive a ballot. The Contractor used two sets of data to estimate
> turnout rates: 1) voting age population estimates 1 and 2)
> individual-level survey data from the November 2004 Current Population
> Survey conducted by the U.S. Census Bureau2 "
>
> Footnotes:
>
> 1 The July 2004 estimates for voting age population were provided by
> the U.S. Census Bureau. Because these numbers include non-citizens,
> the Contractor reduced the numbers by the same percentage the U.S.
> Census Bureau estimated were non-citizens in 2000. Estimates of
> voting age population includes persons who are not registered to vote.
>
> 2. The Current Population Survey is based on reports from
> self-described registered voters who also describe themselves as U.S
> citizens.
>
>
> *Thanks for your feedback*
>
> Regards
>
>
> Karen Lynn-Dyson

> Research Director
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

[redacted]FINISHED

ENTIRE small stack

Karen Lynn-Dyson/EAC/GOV
04/27/2006 03:07 PM

To "Tom O'neill" <[redacted]
Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc foley.33@osu.edu, john.weingart@rutgers.edu, [redacted], tokaji.1@osu.edu
bcc
Subject RE: Schedule for completion of Prov. Voting and Voter ID research

Tom-

I am certain the provisional voting paper will be presented. The Chairman has asked that the Commissioners have an opportunity to review your corrected and final draft of that document prior to it being presented to the EAC Boards, preferably next week.

Because of the issues surrounding voter identification, I am less certain about the protocol that will be followed. I will ask Tom Wilkey and Julie Hodgkins to offer insights on that matter.

I will also ask them about the protocol to be followed regarding the formal submission and acceptance of both the papers.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <[redacted]

"Tom O'neill"
<[redacted]
04/27/2006 10:26 AM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, tokaji.1@osu.edu, foley.33@osu.edu, [redacted]
Subject RE: Schedule for completion of Prov. Voting and Voter ID research

Karen,

Thanks for your quick reply.

Am I correct in understanding that the presentation to the Board of Advisors on May 24 will include both the Provisional Voting report and the Voter ID report?

If the Commissioners do not consider the reports at its June meeting, when will it take action to receive and record the reports?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, April 27, 2006 9:50 AM
To: [redacted]
Cc: john.weingart@rutgers.edu
Subject: Re: Schedule for completion of Prov. Voting and Voter ID research

Tom-

Just had a good conversation with our folks in the legal department, who as you know, are responsible for coordinating our public meetings.

Original plans had slotted Eagleton for the presentation of its final reports on provisional voting and voter id, at a June public meeting. Those plans have been revised to have Eagleton, instead, present its findings to the EAC Board of Advisors and Standards Board on May 24th.

The details of the Board of Advisors and Standards Board meetings are being finalized this week and early next. I will be certain to get your more details, as I learn of them.

Also, I will get you the details on who will provide the EAC peer review of the Voter ID work, as soon as I have them.

Regards-

(back Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/27/2006 03:59 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Fw: Schedule for completion of Prov. Voting and Voter ID research

Tom and Julie-

Take a look and let me know how you would like me to respond to Tom O' Neill's requests.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 04/27/2006 03:54 PM -----

"Tom O'neill"
[redacted]
04/27/2006 03:40 PM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, foley.33@osu.edu, [redacted], tokaji.1@osu.edu
Subject RE: Schedule for completion of Prov. Voting and Voter ID research

Thanks, Karen.

Just to be sure that our expectations are clear, I'll summarize the perspective behind the schedule we submitted for the recent extension.

A. Provisional Voting

1. We presented our Provisional Voting report to the commissioners several months ago, revised its organization and clarified findings and recommendations in line with the comments of staff and commissioners, and we researched Tom Wilkey's additional question of the effect of the time for review on the evaluation of provisional ballots, which will be included in the final revision.
2. The final draft will be completed by May 5 .
3. Based on discussions with you and the commissioners we look forward to presenting that revised, final report to the Advisory Board on May 24, following whatever additional review the Commission finds appropriate.
4. Our discussions with Commissioners and staff anticipated that we would make some presentation of the provisional voting work at the Commission's public meeting in June, a presentation that might include revisions occasioned by the comments of the Advisory Board.

B. Voter ID

1. We presented our Voter ID research to the Commissioners in April and are now revising it in line with their comments.
2. That revised research paper will be discussed in mid May by reviewers selected by the Commission. That date was set specifically to allow us to prepare a final report that would be ready for review by the Advisory Board on May 24.
3. We anticipate that the Commission will want the comments of its Advisory Board on the Voter ID report before it receives it in June. (Indeed, we were advised that the Advisory Board members would be most interested in the accuracy of observations or findings specific to their individual states.)
4. The appropriate conclusion for our work is a presentation of findings and recommendations for both Provisional Voting and Voter ID, 2 closely related topics, to the Commission at its public meeting in late June, just a week before the termination of our contract under the extended schedule.

I hope you'll share this outline of our expectations with the others at the Commission involved in assuring a successful completion of this research and analysis.

Tom O'Neill

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Thursday, April 27, 2006 3:08 PM
> **To:** [redacted]t; twilkey@eac.gov; jthompsonhodgkins@eac.gov
> **Cc:** foley.33@osu.edu; john.weingart@rutgers.edu; [redacted] tokaji.1@osu.edu
> **Subject:** RE: Schedule for completion of Prov. Voting and Voter ID research
>
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>
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>
> I will also ask them about the protocol to be followed regarding the formal submission and acceptance of both the papers.
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

"Tom O'neill"
[redacted]

04/27/2006 10:26 AM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, tokaji.1@osu.edu, foley.33@osu.edu, [redacted]
Subject RE: Schedule for completion of Prov. Voting and Voter ID research

Karen,

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Sent: Thursday, April 27, 2006 9:50 AM
To: [redacted]
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The details of the Board of Advisors and Standards Board meetings are being finalized this week and early next. I will be certain to get your more details, as I learn of them.

Also, I will get you the details on who will provide the EAC peer review of the Voter ID work, as soon as I have them.

Regards-

(back Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Deliberative Process
Privilege

Karen Lynn-Dyson/EAC/GOV
04/28/2006 12:44 PM

To "Tom O'neill" [redacted]
cc arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu, ireed@rutgers.edu, "'Johanna Dobrich'"
bcc Thomas R. Wilkey/EAC/GOV@EAC; rma@hass.caltech.edu; Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
Subject Re: Voter ID Paper --Final Draft

Tim, Tom, John, et.al--

The EAC has identified three academics who are going to serve as peer reviewers of the Eagleton Voter ID paper and research.

They are Jonathan Nagler of New York University, Jan Leighley, University of Arizona, and Adam Berinsky of MIT.
They are ready to review the documents as soon as they are available.

I would like to them one week to review the material and then have a joint conference call on **Thursday, May 11**, in which we would all have an opportunity to discuss the research methodology and statistical analysis, along with general comments and suggestions.

If you are able to get to me the paper and the supporting data analysis, I will distribute to the documents ASAP.
Also let me know, if you would, your availability on May 11 to do this conference all.

I anticipate that it will last approximately 90 minutes.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Deliberative Process Privilege

Karen Lynn-Dyson/EAC/GOV
04/28/2006 01:13 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc
bcc
Subject Re: Voter ID Paper --Final Draft

Tom-

You'll recall that we discussed the fact that the peer review group who Eagleton has assembled do not have the sufficient technical expertise to give us the expert/technical advice we need on the statistical analysis of the Voter ID piece. Only two persons on Eagleton's peer review group have a requisite research and statistical background
and knowledge.

You may also remember that Mike told me that he thought that the paper needed an additional set of eyes and review by academics with a background and expertise in election statistics and analysis. When I initially proposed a review panel of six you said that was too many; we agreed that I would find three persons to do the review and that we would pay them a small honoraria for doing the review.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Deliberative Process Privilege

Karen Lynn-Dyson/EAC/GOV
04/28/2006 01:33 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc
bcc
Subject Re: Voter ID Paper --Final Draft

$100-$200 each, review next week.

Conference call with Eagleton to discuss results on May 11.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
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Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
04/28/2006 01:23 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: Voter ID Paper --Final Draft

How much of an honorarium and how fast do we get their review.

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 04/28/2006 01:13 PM
To: Thomas Wilkey
Subject: Re: Voter ID Paper --Final Draft

Tom-

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K

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Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
04/28/2006 02:00 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc
bcc
Subject Re: Voter ID Paper --Final Draft

If we get that many varying opinions from such experts, probably says this work is too controversial to take to a level of serious public review and discussion. That would be a good thing to know, and would save us the embarrassment, I think.

Get some rest. You missed my daughter yesterday- I wanted her to meet my boss.

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

05/01/2006 02:58 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

bcc

Subject E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/01/2006 03:03 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
bcc
Subject Re: E-mail to Voter ID peer reviewers

It's my understanding that Julie thinks we are " good to go" as long as we don't pay them.

Correct?

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc
Subject Re: E-mail to Voter ID peer reviewers

Did we resolve the contact issues on this?

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 02:58 PM
To: Thomas Wilkey; Juliet Thompson-Hodgkins
Subject: E-mail to Voter ID peer reviewers

Tom and Julie-

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Sincerely,

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

05/01/2006 05:36 PM

To berinsky@mit.edu

cc

bcc

Subject Review of EAC research on Voter Identification

Dr. Berinsky-

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

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Sincerely,

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U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/01/2006 05:37 PM

To leighley@email.arizona.edu
cc
bcc
Subject Fw: Review of EAC research on Voter Identification

Dr. Leighley-

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

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Karen Lynn-Dyson/EAC/GOV

05/01/2006 05:38 PM

To jonathan.nagler@nyu.edu

cc

bcc

Subject Fw: Review of EAC research on Voter Identification

Dr. Nagler-

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While we are unable to offer financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

05/04/2006 04:14 PM

To Aletha Barrington/CONTRACTOR/EAC/GOV@EAC

cc

bcc

Subject E-mail addresses for EAC peer reviewers

Aletha-

Here are the names and e-mail addresses of the three individuals who will participate in the May 11 11:30 am conference call

Adam Berinsky- berinsky@mit.edu
Jonathan Nagler- johnathan.nagler@nyu.edu
Jan Leighley- leighley@email. arizona.edu

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
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Karen Lynn-Dyson/EAC/GOV

05/05/2006 09:00 AM

To berinsky@mit.edu, leighley@email.arizona.edu, jonathan.nagler@nyu.edu
cc Aletha Barrington/CONTRACTOR/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
bcc Bert A. Benavides/EAC/GOV@EAC
Subject Fw: Revised Voter ID Analysis

Colleagues-

Attached please find the data analysis on voter identification requirements which the Eagleton Institute of Politics has prepared for the U.S. Election Assistance Commission.

As you will note from Eagleton's Project Manager, Tom O'Neill, the voter id paper which incorporates this analysis, and will be presented to the public in June, is forthcoming early next week.

EAC's Contract's Assistant, Aletha Barrington, will be in touch with each of you to provide specifics regarding the May 11, 11:30 am conference call, in which we will discuss the papers.

In the meantime, many thanks again for agreeing, on such short notice, to lend your expertise to this effort.

Regards-

Karen Lynn-Dyson
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 05/05/2006 08:49 AM -----

"Tom O'neill"
[redacted]
05/04/2006 05:00 PM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, foley.33@osu.edu, [redacted] "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>
Subject Revised Voter ID Analysis

Karen,

Attached is Tim Vercellotti's Voter ID analysis revised to use Citizen Voting Age population as the base for turnout calculations and to take account of comments or issues raised by the EAC and our Peer Review Group. This draft is for distribution to the reviewers who will meet by teleconference on May 11, at, we understand, 11:30 a.m.

You are receiving this at the same time that it is being distributed to the Eagleton-Moritz team so that the new reviewers will have a week to prepare for our conversation on the 11th. Early next week you will receive a revised summary paper on Voter ID that incorporates the new data and findings in Tim's revised analysis. That too will be for distribution to the new reviewers.

Tom O'Neill

VoterIDAnalysis VercRev0504.doc

Analysis of Effects of Voter Identification Requirements on Turnout

Tim Vercellotti
Eagleton Institute of Politics
Rutgers University

May 4, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater for some specific types of requirements. For example, critics argue that requiring voters to produce government-issued photo identification on Election Day is more demanding than, say, requiring that they state their names at the polling place. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I treated the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[2]

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[2] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. I coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the

dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county exerted a positive effect on voter turnout, and the percentage of individuals living below the poverty line had a negative effect. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance ($p = .05$).

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] In addition, adding the interactions to the model resulted in the percentage of Hispanics in the population having a direct and negative effect on turnout. The interactions suggest that voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ($p < 0.005$).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

[Table 3 here]

The effects of the minimum requirements fell short of statistical significance ($p = 0.08$). The battleground state variable continued to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate had no statistically significant effect. As in the maximum identification requirement model, as the percentage of the population that is poor increased, turnout declined. As the percentage of elderly increased, so did turnout. The proportion of African-Americans in the population had a positive effect on turnout, while the percentage of Hispanics did not affect turnout.

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intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.13 [-0.03 (voter id) - 0.13 (Hispanic) + 0.03 (voter id X Hispanic)].

Adding interactive effects to the model resulted in a statistically significant and negative effect of minimum voter identification requirements on turnout. The percentage of Hispanic adults in the county had a significant and negative effect on turnout, and the percentage of individuals below the poverty line continued to have a negative effect. Interactions between the percentages of Hispanics and those below the poverty line and minimum voter identification requirements also were significant. The percentage of African-Americans in the county and the interaction between African-Americans and voter identification requirements were not significant. A chi-square test for the difference in fit between the two models showed that the model with interactions provides a better fit to the data ($p < .025$).

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the demands of voter identification requirements increase, turnout declines. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[5] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[6] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S.

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[5] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[6] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[7] As in the analysis of aggregate data, I coded voter identification requirements for each respondent's state of residence on a scale of one to five, with one representing the least demanding requirement (stating one's name) and five representing the most demanding requirement (photo identification or affidavit).

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes).[8] Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which

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[7] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[8] Asian-Americans are included in the "other non-white races" category. In response to a request from officials at the U.S. Election Assistance Commission who had read an earlier version of this paper and were curious about the experiences of Asian-Americans, I ran models using Asian-Americans as a separate category in addition to the models presented here. Voter identification requirements did not have a statistically significant effect on whether Asian-American voters said they turned out in the 2004 election.

calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[9] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 0.912 for stating one's name to 0.887 for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of .025, or 2.5 percent, across the five types of identification.[10] When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it

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[9] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[10] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of <u>all</u> citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest, omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[11] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of Black/Non-Hispanics voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent when the maximum requirement was stating one's name, and the probability dropped 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Breaking down the 18- to 24-year-old age group by race shed additional light on the effects of voter identification requirements on specific groups.

[Table 8 here]

The gap in predicted probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out was 9.2 percent when the identification requirements varied from stating one's name to providing photo identification. The gap was 7.8 percent when taking into account the minimum requirements. The effects of maximum voter identification requirements also were statistically significant for African-Americans in the 18- to 24-year-old age group, with a gap in

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[11] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

the predicted probability of voting of 10.6 percent. Maximum and minimum voter identification requirements were not a significant predictor of voting among Hispanics ages 18 to 24.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[12]

[Table 9 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements). Given that political discourse about voter identification requirements includes concerns about the effects of the requirements on poor and minority voters, I also ran probit analyses for sub-samples of white and minority voters who fell below the poverty line. The voter identification requirements did not exert statistically significant effects on turnout among poor White/Non-Hispanic and Hispanic voters, but did have a significant effect on Black/Non-Hispanic voters who were below the poverty line.[13] Allowing the maximum voting requirement to vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 10 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

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[12] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

[13] The lack of significant effects for poor Hispanic voters is in contrast to the results from the aggregate data analysis. The sub-sample of poor Hispanic voters was small (n = 491), which may have contributed to the lack of statistical significance.

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit. African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters. The effects on African-American voters were pronounced for two specific sub-samples: African-American voters living below the poverty line and those in the 18- to 24-year-old age group. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[14] Or, do the requirements result in some voters

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[14] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not

being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		**Minimum Requirement**	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.6 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.69	0.02
Voter ID requirements	-0.01**	0.003	-0.03**	0.004
Battleground State	0.04*	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.48**	0.03	0.50**	0.03
% African-American	0.05**	0.01	0.06	0.03
% Hispanic	-0.02	0.01	-0.13**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8638.0		-8651.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.63	0.02	0.66	0.02
Voter ID requirements	-0.009	0.005	-0.02**	0.006
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.48**	0.03	0.48**	0.03
% African-American	0.05**	0.01	0.04	0.03
% Hispanic	-0.12	0.01	-0.13**	0.04
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	0.01	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8630.8		-8620.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		Minimum requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05* p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model		
	Maximum requirement	**Minimum requirement**
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White/Non-Hispanic voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.795	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 8. Predicted probability of voter turnout – Age groups by race

	White/Non-Hispanic 18 - 24		Black/Non-Hispanic 18 – 24
	Maximum requirements	**Minimum requirements**	**Maximum requirements**
State name	0.844	0.836	0.899
Sign name	0.823	0.818	0.877
Match signature	0.801	0.799	0.852
Non-photo ID	0.777	0.779	0.824
Photo ID	0.752	----	0.793
Affidavit	----	0.758	----
Total difference – lowest to highest	0.092	0.078	0.106
N	3,814		562

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Minimum voter identification requirements were not a significant predictor of voting for Black/Non-Hispanic voters ages 18 to 24. Maximum and minimum voter identification requirements were not a significant predictor of voting for Hispanic voters ages 18 to 24.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – Voters above and below the poverty line

	All voters above the poverty line		All voters below the poverty line	Black/Non-Hispanic voters below the poverty line
	Maximum requirement	**Minimum requirement**	**Minimum requirement**	**Maximum requirement**
State name	0.920	0.922	0.784	0.833
Sign name	0.915	0.915	0.772	0.816
Match signature	0.909	0.907	0.758	0.798
Non-photo ID	0.903	0.899	0.745	0.778
Photo ID	0.897	----	----	0.758
Affidavit	----	0.891	0.731	
Total difference from lowest to highest	0.023	0.031	0.053	0.075
N	49,935		5,038	1,204

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for white and Hispanic voters who were below the poverty line. Minimum voter identification requirements were not a significant predictor of voting for Black voters below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 10. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Karen Lynn-Dyson/EAC/GOV
05/08/2006 11:22 AM

To "Tom O'neill" [redacted]
cc Aletha Barrington/CONTRACTOR/EAC/GOV@EAC
bcc
Subject Re: May 11 Conference Call

Tom-

Aletha Barrington, EAC's Contracts Assistant will get you the necessary information ASAP.

Our three reviewers received the revised Eagleton paper on Friday.

Regards-
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <tom_oneill@verizon.net>

"Tom O'neill"
<[redacted]
05/08/2006 11:01 AM

To klynndyson@eac.gov
cc
Subject May 11 Conference Call

Karen,

Has the 11:30 time for our conference call on May 11 been confirmed? I'd like to pass along the call-in and ID numbers to our participants as soon as possible. Do you have the information available yet?

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV
05/08/2006 12:58 PM

To "Tom O'neill" <[redacted]
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC
bcc
Subject Re: Delivery of the final report on Provisional Voting

Tom-

I'd like to be able to include the final report on Provisional Voting in the materials going to EAC Standards Board and Board of Advisors in advance of their meetings.

It cannot be included unless it has been reviewed and approved by the four Commissioners.

I believe you said I would have the final copy of it sometime this week?

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/08/2006 02:49 PM

To "Tom O'neill" [redacted]
cc Aletha Barrington/CONTRACTOR/EAC/GOV@EAC
bcc
Subject RE: Delivery of the final report on Provisional Voting

Tom-

Aletha will be sending you precise instructions regarding Thursday's 11:30 AM call ASAP.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <tom_oneill@verizon.net>

"Tom O'neill"
[redacted]
05/08/2006 01:16 PM

To klynndyson@eac.gov
cc
Subject RE: Delivery of the final report on Provisional Voting

Karen,

I plan to send you late today or early tomorrow the revised Voter ID report that will be included in our teleconference on Thursday. Once that is in your hands, I will turn my attention to the Provisional Voting report, and will have that to you before the end of the week.

Has 11:30 been confirmed as the time for the teleconference?

Tom O'Neill

> -----Original Message-----
> **From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]
> **Sent:** Monday, May 08, 2006 12:59 PM
> **To:** tom_oneill@verizon.net
> **Cc:** aambrogi@eac.gov; asherrill@eac.gov
> **Subject:** Re: Delivery of the final report on Provisional Voting
>
> Tom-
>
> I'd like to be able to include the final report on Provisional Voting in the materials going to EAC

Standards Board and Board of Advisors in advance of their meetings.

It cannot be included unless it has been reviewed and approved by the four Commissioners.

I believe you said I would have the final copy of it sometime this week?

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

05/09/2006 09:54 AM

To berinsky@mit.edu, leighley@email.arizona.edu, jonathan.nagler@nyu.edu[redacted]
cc Aletha Barrington/CONTRACTOR/EAC/GOV@EAC
bcc Donetta L. Davidson/EAC/GOV@EAC; Thomas R. Wilkey/EAC/GOV@EAC
Subject Materials for Thursday's 11:30 conference call

All-

Attached please find the complete packet of materials that will serve as the basis for our conference call on Thursday. You have already received the statistical analysis; the voter ID report was submitted this morning.

The Eagleton staff have noted that you may find the material contained in Appendix A useful to your review; the other appendices are likely to be less germane .

The call in information for Thursday:

1-866-222-9044
Passcode 62209#

Thank you again for your assistance.

Regards-

Eagleton Voter ID report-final.doc VoterIDAnalysis VercRev0504.doc Karen Lynn-Dyson

Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

REVISED FINAL DRAFT
05/08/06

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

This report to the United States Election Assistance Commission (EAC) analyzes the effects of voter identification requirements on turnout in the 2004 election and makes recommendations for best practices to evaluate proposals for voter ID requirements. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a draft report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. They are progressively more rigorous based on the demands they make on voters.[1] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity,

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[1] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, we drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints on voter ID requirements.

Findings

Our analysis of data from the 2004 election indicates that the form of identification required of voters affects turnout. Lack of ID can keep voters from the polls or prevent them from casting a regular ballot if they go to the polling place.[2] This finding emerged from both the analysis of aggregate, county-level data and the individual-level data of the Current Population Survey. The overall effect for all registered voters was fairly small, but statistically significant.

Voter turnout in 2004 was lower in states where voter identification requirements were more demanding. The data show a general movement toward lower turnout as voters are required to present levels of proof of their identify.

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[2] It also seems reasonable to conclude that in states that require an identity document to vote, more voters –those lacking the required ID—will cast provisional ballots. This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.

The aggregate data show that 60.9 percent of the estimated citizen voting age population turned out in 2004. An average of 64.6 percent turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification, a reduction of 6.5 percentage points. That figure, however, probably overstates the effect of voter ID requirements since the inclusion of other factors in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of other factors, the analysis supports the hypothesis that as voter identification requirements increases, turnout declines.

The effects were more pronounced for some specific subgroups. Hispanic voters, the poor and those who did not graduate from high school appear to be less likely to vote as the identification requirement becomes more demanding. The analysis for some other demographic groups illustrate the range of effects predicted for more rigorous voter ID requirements:

Race or Ethnicity

- In the individual-level data for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of identification requirements.
- More rigorous ID requirements did not have a statistically significant effect when looking at all African-Americans, but
- African-American voters from households below the poverty line were 7.5 percent less likely to vote as the ID requirements varied from stating one's name to providing photo identification.

Income

- Citizens from poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.

Education

- Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the requirements ranged from stating one's name to providing photo identification.

Age

- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Turnout by young (18-24) African-American voters in states that required a government-issued photo ID was about 10% less likely to vote than in states where they had only to state their name.
- The elderly, while they would be slightly less likely to vote as the requirements changed from stating name to providing photo ID, would not necessarily be affected in the dramatic manner predicted by opponents of photo identification requirements.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity.[3] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

The current lack of understanding of precisely how voter ID requirements affect turnout can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the

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[3] The EAC has contracted with other researchers to study vote fraud issues.

2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[4] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements affect the decision by potential voters to go or stay away from the polls-- are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

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[4] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
    I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[5], and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is

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[5] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

SUMMARY OF RESEARCH

Background and Approach of the Study

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [6] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[7]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[8]

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[6] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

[7] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[8] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud.*

Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and , if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[9] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot

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[9] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

rejected.[10] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here can best be described as the questions policy-makes should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[11]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[12]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[13]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve

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[10] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

[11] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[12] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[13] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[14] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[15]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, nor unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another.

Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex. Moving beyond the statutes and regulations,

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[14] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[15] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places.

Like any system run by fallible people, the voter ID process is subject to variation in practice.[16] Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Under the pressures of Election Day, there is no sure way to report the wide variety of conditions each voter encounters. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. Nevertheless, we are satisfied that the categories used in this report provide a level of discrimination among voter identification regimes sufficient for the analysis that we have undertaken.

TABLE 1 -- Voter ID Requirements[17]

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit

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[16] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

[17] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration
South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable for first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Effect of Voter ID requirements on Turnout

We examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

The Voter ID category assigned to each state is shown in Table 1. We analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau. [18]

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 64.6 percent of the citizen voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis supports the hypothesis that as voter identification requirements become more stringent, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Methods

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had

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[18] See Appendix for the full report: Tim Vercellotti, "Analysis of Voter Identification Requirements on Turnout," The Eagleton Institute of Politics, Rutgers University, May 4, 2006.

to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[19]

We coded the states according to these requirements to test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

Election laws in many states, however, offer exceptions to these requirements if potential voters lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). In recognition of this fact, we also categorized states based on the *minimum* requirement for voting with a regular ballot.

In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states).

We treated the minimum ID in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

We examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the

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[19] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

The aggregate data posed a greater challenge to determine percentage of the voting-age population that has U.S. citizenship. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue we estimated the 2004 citizen voting-age population for each county using a method reported. Therefore, we calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. This method was used in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission.

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. In the statistical analysis, we coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification.

Findings

As the level of required ID proof increases, with photo identification as the most demanding requirement, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30, p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20, p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.6 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.8 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	*60.9 %*		

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone do not determine voter turnout. Other factors make a difference in turnout, often a greater difference than the ID requirements. Multivariate models can take into account other predictors of turnout and therefore paint a more complete picture of the relationship between voter identification requirements and turnout. The model used here also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The maximum ID requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. The more senior citizens and African-Americans in the county, the higher the turnout. The percentage of the population living below the poverty reduced turnout. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance (p = .05).

The analysis tested the hypothesis that stricter voter ID requirements dampen turnout among minorities. The data revealed no statistically significant effect on turnout for African-Americans in general. But it revealed a significant reduction in turnout for Hispanics and the poor. The analysis using the minimum ID categories produced similar results.

Analysis of the aggregate data at the county level supports the hypothesis that as voter ID requirements grow stricter, turnout declines. This effect is strongest in counties with concentrations of Hispanic residents or families below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout.[20] Married people are more likely to vote than those who are not married. To explore the effects of voter identification requirements on turnout, examining individual-level data is important.

Individual-level Analysis

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 60.9%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger citizen voting-age population for the

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[20] Education is an important factor in predicting turnout. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[21] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. Excluded are those who said they were not registered to vote and those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Also excluded are respondents who said they were not U.S. citizens.[22]

The dependent variable in these analyses is whether a respondent reported voting in the November 2004 election. As in the aggregate analysis, stricter voter ID requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004.

Table 3 Predicted probability of voter turnout

ID Category	Maximum requirement	Minimum requirement
State name	91.2%	91.1%
Sign name	90.6%	90.3%
Match signature	90.0%	89.5%
ID	89.4%	88.7%
Photo ID	88.7%	----
Affidavit	----	87.8%
Difference from lowest to highest	**2.50%**	**3.30%**
N	54,973	

Predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

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[21] The Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent.

[22] The CPS did not ask the voting questions of respondents who were not U.S. citizens. The design of the questionnaire skips those questions for non- citizens.

The influence of voter identification requirements, holding all other variables constant, is shown in Table 3 below. The probability of voting dropped with each level of voter identification requirement, with a total drop of 2.5 percent, across the five types of identification for the maximum requirement and 3.3% for the minimum requirements. [23]

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group.

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

- Turnout in states requiring photo ID was predicted as 8.9 percentage points lower than in states where voters simply stated their names.
- The strictest ID requirements reduced the probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out by 7.8 to 9.2 percentage points.
- For African-Americans in the 18- to 24-year-old age group the gap was 10.6 percentage points.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[24] Allowing the maximum voting requirement to

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[23] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

[24] Respondents were coded as being above or below the U.S. Census Bureau's 2004 poverty line based on their reported annual household income and size of the household.

vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well. Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Conclusions of the Analysis

As the stringency of voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data.

- In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements.
- Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.
- African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education.

- Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification.

- When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.

Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters.

- The effects on African-American voters were pronounced for two specific sub-samples, African-American voters living below the poverty line and those in the 18- to 24-year-old age group.
- The elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. Do potential voters who cannot or do not want to meet the identification requirements simply stay away from the polls? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? (Proponents of stricter voter ID requirements might argue that some part of the reduction comes from keeping the truly ineligible from voting.)

Our data alone cannot resolve these questions. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.
It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued

photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction,

enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the

legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased. [25]

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[25] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal*

The dynamics of Voter ID requirements –how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed.[26]

Election Reform, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

[26] "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

Appendices

a. Summary of Voter ID Requirements by State (included)
b. Summary of case law on Voter ID issues (included with this draft)
c. Analysis of Effects of Voter ID Requirements on Turnout (furnished separately)
d. Indexed database of major articles on Voter ID Requirements and related topics
e. Compendium of states' legislation, procedures, and litigation (available as an electronic document)

Appendix A
Summary of Voter Identification Requirements By State

Prepared by
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Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification: (1) A current valid photo identification. (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following: a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification. b. A valid United States passport. c. A valid Alabama hunting or fishing license. d. A valid Alabama permit to carry a pistol or revolver. e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States. f. A valid United States military identification card. g. A certified copy of the elector's birth certificate. h. A valid Social Security card. i. Certified naturalization documentation. j. A certified copy of court records showing adoption or name change. k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card"). (c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b). (e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law. (f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs. Effective Date: June 24, 2003	Ala. Code § 17-11A-1
Alaska	Provide ID	(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including (1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or (2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this	Alaska Stat. § 15.15.225

		paragraph must show the name and current address of the voter. (b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under AS 15.07.050, and did not provide identification as required in AS 15.07.060. (c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot. effective June 17, 2003	
Arizona	Provide ID	B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot: 1. The person shall present either one of the following: (a) A current form of identification that bears a photograph of the person and the name of the person. (b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person. 2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584. Effective Dec. 1, 2003	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	7-5-305. Requirements. (a) Before a person is permitted to vote, the election official shall: (1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list; (2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth; (3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list; (4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate; (5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct. (B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files. (C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct; (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files; (7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and	Arkansas Code Annotated § 7-5-305

		(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card. (B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification. (ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney. (iii) The prosecuting attorney may investigate possible voter fraud; and (9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the preson is a disabled voter and presents himself or herself to vote. Effective: July 16, 2003	
California	Sign Name	Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article. (Enacted in 1994, no amendments since)	Cal. Elec. Code § 14216
Colorado	Provide ID	(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges, * * * (4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title. (19.5)(a) "Identification" means: (I) A valid Colorado driver's license; (II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.; (III) A valid United States passport; (IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state; (V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States; (VI) A valid United States military identification card with a photograph of the eligible elector; (VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector; (VIII) A valid medicare or medicaid card issued by the United States health care	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

		financing administration; (IX) A certified copy of a birth certificate for the elector issued in the United States; or (X) Certified documentation of naturalization. (b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado. Effective 5/28/2004	
Connecticut	Provide ID	(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate. Effective May 10., 2004	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record. Effective: July 9, 2002	15 Del. Code § 4937
D.C.	Sign Name	(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection. (2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the	D.C. Code § 1-1001.07

		polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection. (3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records. (Effective April 3, 2001)(not added as part of 2005 amendment)_	
Florida	Photo ID	101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector. (2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49. **97.0535** (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired: 1. Florida driver's license. 2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles. 3. United States passport. 4. Employee badge or identification. 5. Buyer's club identification. 6. Debit or credit card. 7. Military identification. 8. Student identification. 9. Retirement center identification. 10. Neighborhood association identification. 11. Entertainment identification. 12. Public assistance identification. (b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant: 1. Utility bill.	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535

		2. Bank statement. 3. Government check. 4. Paycheck. 5. Other government document (excluding voter identification card). Version effective 1/1/2005-12/31/2005	
Georgia	Provide ID	(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following: (1) A valid Georgia driver's license; (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification; (3) A valid United States passport; (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state; (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business; (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; (7) A valid Georgia license to carry a pistol or revolver; (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States; (9) A valid United States military identification card; (10) A certified copy of the elector's birth certificate; (11) A valid social security card; (12) Certified naturalization documentation; (13) A certified copy of court records showing adoption, name, or sex change; (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector; (15) A bank statement, or a legible copy thereof, showing the name and address of the elector; (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or (17) A government document, or a legible copy thereof, showing the name and address of the elector. (b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement." effective June, 2003	Ga. Code. Ann. § 21-2-417

Hawaii	Photo ID	(b) The voter shall present valid identification to the official in charge of the pollbook. ***Do I Need an I.D. to Vote on Election Day?*** **Yes.** Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification. From the 2004 version of the administrative code. **§ 11-136 Poll book, identification, voting.** Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person. After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. Last amended 2003.	Haw. Code. R. § 2-51-80 (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b) Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix HRS 11-136
Idaho	Sign Name	(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book. (2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein. (5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. (Last amended in 1972)	Id. St. §34-1106
Illinois	Give Name	Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he	10 Ill. Comp. Stat. 5/17-9

		shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.	
Indiana	Sign Name	–	West's Annotated Indiana Code § 3-11-8-25
Iowa	Sign Name	1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form: VOTER'S DECLARATION OF ELIGIBILITY I do solemnly swear or affirm that I am a resident of the .... precinct, ... ward or township, city of ...., county of ...., Iowa. I am a registered voter. I have not voted and will not vote in any other precinct in said election. I understand that any false statement in this declaration is a criminal offense punishable as provided by law. ____________________ Signature of Voter ____________________ Address ____________________ Telephone Approved:	Iowa Code § 49.77

		Board Member 2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials. 3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner. A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote. (From 2004 version of Iowa Annotated Code; effective January 1, 1995)	
Kansas	Sign Name	(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention. (Approved April 14, 2004, 2004 Kansas Laws Ch. 93)	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	117.227 Confirmation of voter's identity Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification. Effective: 7/15/02 31 KAR 4:010. Voter identification cards. Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.	Ky Rev. Stat. Ann. 117.227 31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	A. Identification of voters. (1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place. (2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant	La. Rev. Stat. Ann. 18:562

		shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565. Effective: 1/1/2002	
Maine	Give Name	The voting procedure is as follows. 1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice. (In effect at time of 2003 amendment: 2003, c. 584, § 9)	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	10-310. (a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall: (1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot; (2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or (ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article; (3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register; (4) verify the address of the voter's residence; (5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and (6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.	Md. Elec. Law § 10-310
Mass.	Give Name	Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited. Last amended in 1981 (5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).	Mass. Ann. Laws 54 § 76 950 Mass. Code Regs. 52.03
Michigan	Sign Name	(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state	Mich. Comp. Laws Ann. §

		identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727. (2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector. The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies. (Effective March 31, 1997)	168.523
Minnesota	Sign Name	(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not	Minn. Stat. § 204C.10

		more than $10,000, or both." (b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth. (c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest. (Effective January 1, 2004)	
Mississippi	Sign Name	* * * When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance. (Effective January 1, 1987)	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list: (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state; (2) Identification issued by the United States government or agency thereof; (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri; (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; (5) Driver's license or state identification card issued by another state; or (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose. (Last amended in 2002)	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address. (From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [Unrelated section was amended in 2005])	Mont. Code. Ann. §13-13-114(1)(a)
Nebraska	Sign Name	(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document. (Last amended in 2003) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter. (Last updated in 2003)	Neb. Rev. Stat. § 32-913 Neb. Rev. Stat. § 32-914
Nevada	Match Sig.	1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2. 2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are: (a) The card issued to the voter at the time he registered to vote; (b) A driver's license; (c) An identification card issued by the Department of Motor Vehicles; (d) A military identification card; or	Nev. Rev. Stat.§ 293.277

		(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture. Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers. b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery. c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5). Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

		case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list. E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot. G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster. (From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)	(Recompiled as §1-12 -7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)
New York	Match Sig.	1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith. 2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election. 3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature. 4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the	N.Y. Law § 8-304 (McKinney)

		space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record. 5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same Last Amended 1986	
North Carolina	Give Name	(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook. 1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address. (From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark. The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot. (Effective at time of last update, 1992 H 182, eff. 4-9-93)	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry. (Last amended in 1990) Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours. (Last amended in 1990)	Okla. Stat. Ann. tit. 26, § 7-114 Okla. Stat. Ann. tit. 26, § 7-117
Oregon	Match Sig.	All elections in Oregon are Vote by Mail. An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity (http://www.uhavavote.org/votingguide/votebymail.html) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register. (In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))	
Rhode Island	Give Name	(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form: BALLOT APPLICATION (Poll List) Senatorial District ____________ Representative District ____________ Voting District ____________ Election Date ____________ I hereby certify that I am a registered and qualified elector in the above voting district of City of and hereby make application for ballots to be voted at this election. ____________ (Signature of Voter) ____________ (Residence Address) Number Approved ____________ (Supervisor of Election)	R.I. Gen. Laws § 17-19-24

		(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time. (Last amended 2004, Current through January 2005 Session)	
South Carolina	Photo ID	**§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.** When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5- 125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers. Last amended: 1968	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either: (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or	S.D. Codified Laws § 12-18-6.1

		technical school, located within the State of South Dakota. Last amended March 2004	
Tennessee	Provide ID	Identification of eligible voters (a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet. (2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists: (A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar; (B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list; (C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and (D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission. Last amended 2003	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place. (Last amended in 1997)	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges. (b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district. (3) If the election judge determines that the voter is registered: (a) the election judge in charge of the official register shall: (i) write the ballot number opposite the name of the voter in the official register; and	Utah Code Ann. § 20A-3-104

		(ii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter's name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) hand the voter a ballot; and (iv) allow the voter to enter the voting booth. (In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)	
Vermont	Give Name	Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and: (1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting. (2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting (Last amended in 2003)	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him. B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business. If the voter's name is found on the pollbook, if he presents one of the forms of	Va. Code. Ann.

		identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement. (Version in effect as of 2004- effective 4/12/2004)	
Washington	Sign Name	29A.44.201. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. (In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004) 29A.44.210. Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter. The precinct election officers shall then record the voter's name. Effective date: July 1, 2004	Wash. Rev. Code § 29A.44.201 & 29A.44.210
West Virginia	Match Sig.	(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon. * * * (c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the	W. Va. Code § 3-1-34 (a)

		election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter. (In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)	
Wisconsin	Give Name	6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number. (In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)	Wis. Stat. § 6.79
Wyoming	Give Name	(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22- 15-109, no identification shall be required when: (i) Voting in person or by mail after having registered in person; or (ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election. (In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)	Wyo. Stat. Ann. § 22-3-118

APPENDIX B –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14th Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

  - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
  - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15th Amendment: same reasons

<u>Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:</u>

***American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required <u>all</u> in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover,* 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.,* CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[27]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[27] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[28]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[29] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[28] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[29] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[30] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[30] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

Appendix C

"Analysis of Effects of Voter Identification Requirements on Turnout "

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PROVIDED EARLIER

APPENDIX D

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
    - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
    - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
    - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
    - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
    - Discusses changes in AL to their election law in 2003, including adding voter ID
    - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
    - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
    - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
    - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
    - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
    - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
    - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
    - Lot of analysis on HAVA and voter ID
    - Little bit of historical
    - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
  - Costs & Benefits of Internet voting
  - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
  - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
  - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
  - History of voting and requirements
  - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice.* 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics,* 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics.* 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review.* 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly.* 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------- "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice.* 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review.* 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy.* 19:4 (November 2003).

Center for the Study of the American Electorate. “2004 Election Report”. 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections.* Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective.* Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies*. 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science*. 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior*. 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography*. 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies*. 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout*. Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research*. 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects*. Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------- "Easy Registration and Voter Turnout." *Journal of Politics*. 59:2 (May 1997).

------- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000).

------- "Voter Registration and Turnout in the United States." *Perspectives on Politics*. 2:3 (September 2004).

------- "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly*. Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research*. 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998).

------- "The Political Implications of Higher Turnout." *British Journal of Political Science*. 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------- "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------- *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------- "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------- "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------- "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------- "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------- *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------- *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------- "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------- "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review.* 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix E

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

Analysis of Effects of Voter Identification Requirements on Turnout

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May 4, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater for some specific types of requirements. For example, critics argue that requiring voters to produce government-issued photo identification on Election Day is more demanding than, say, requiring that they state their names at the polling place. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research performed for this study by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[1] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[1] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I treated the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[2]

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[2] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .0001$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ($r = -.20$, $p < .0001$). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. I coded the voter identification requirements on a scale of one to five, with one representing the least demanding form of identification and five representing the most demanding form of identification. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[3] The

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[3] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the

dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements; those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county exerted a positive effect on voter turnout, and the percentage of individuals living below the poverty line had a negative effect. The effect of the percentage of Hispanic adults in the county on turnout fell just short of statistical significance ($p = .05$).

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.[4] In addition, adding the interactions to the model resulted in the percentage of Hispanics in the population having a direct and negative effect on turnout. The interactions suggest that voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ($p < 0.005$).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

[Table 3 here]

The effects of the minimum requirements fell short of statistical significance ($p = 0.08$). The battleground state variable continued to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate had no statistically significant effect. As in the maximum identification requirement model, as the percentage of the population that is poor increased, turnout declined. As the percentage of elderly increased, so did turnout. The proportion of African-Americans in the population had a positive effect on turnout, while the percentage of Hispanics did not affect turnout.

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intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

[4] The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.13 [-0.03 (voter id) - 0.13 (Hispanic) + 0.03 (voter id X Hispanic)].

Adding interactive effects to the model resulted in a statistically significant and negative effect of minimum voter identification requirements on turnout. The percentage of Hispanic adults in the county had a significant and negative effect on turnout, and the percentage of individuals below the poverty line continued to have a negative effect. Interactions between the percentages of Hispanics and those below the poverty line and minimum voter identification requirements also were significant. The percentage of African-Americans in the county and the interaction between African-Americans and voter identification requirements were not significant. A chi-square test for the difference in fit between the two models showed that the model with interactions provides a better fit to the data ($p < .025$).

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the demands of voter identification requirements increase, turnout declines. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[5] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[6] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S.

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[5] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[6] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[7] As in the analysis of aggregate data, I coded voter identification requirements for each respondent's state of residence on a scale of one to five, with one representing the least demanding requirement (stating one's name) and five representing the most demanding requirement (photo identification or affidavit).

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes).[8] Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which

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[7] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[8] Asian-Americans are included in the "other non-white races" category. In response to a request from officials at the U.S. Election Assistance Commission who had read an earlier version of this paper and were curious about the experiences of Asian-Americans, I ran models using Asian-Americans as a separate category in addition to the models presented here. Voter identification requirements did not have a statistically significant effect on whether Asian-American voters said they turned out in the 2004 election.

calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[9] I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 0.912 for stating one's name to 0.887 for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of .025, or 2.5 percent, across the five types of identification.[10] When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it

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[9] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[10] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of <u>all</u> citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest, omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.[11] If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for White/Non-Hispanic voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.2 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of Black/Non-Hispanics voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name was the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent when the maximum requirement was stating one's name, and the probability dropped 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Breaking down the 18- to 24-year-old age group by race shed additional light on the effects of voter identification requirements on specific groups.

[Table 8 here]

The gap in predicted probability that White/Non-Hispanic voters in the 18- to 24-year-old category would turn out was 9.2 percent when the identification requirements varied from stating one's name to providing photo identification. The gap was 7.8 percent when taking into account the minimum requirements. The effects of maximum voter identification requirements also were statistically significant for African-Americans in the 18- to 24-year-old age group, with a gap in

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[11] See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

the predicted probability of voting of 10.6 percent. Maximum and minimum voter identification requirements were not a significant predictor of voting among Hispanics ages 18 to 24.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.[12]

[Table 9 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements). Given that political discourse about voter identification requirements includes concerns about the effects of the requirements on poor and minority voters, I also ran probit analyses for sub-samples of white and minority voters who fell below the poverty line. The voter identification requirements did not exert statistically significant effects on turnout among poor White/Non-Hispanic and Hispanic voters, but did have a significant effect on Black/Non-Hispanic voters who were below the poverty line.[13] Allowing the maximum voting requirement to vary from the least to the most demanding, the probability that African-American voters below the poverty line said they had voted dropped by 7.5 percent.

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 10 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

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[12] I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

[13] The lack of significant effects for poor Hispanic voters is in contrast to the results from the aggregate data analysis. The sub-sample of poor Hispanic voters was small (n = 491), which may have contributed to the lack of statistical significance.

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote as the level of required identification became more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households were 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit. African-American voters from households below the poverty line were 7.5 percent less likely to vote as the maximum requirements varied from stating one's name to providing photo identification.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school were 6.7 percent less likely to say they voted as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education were 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit. Breaking down the age group by race, the effects were significant for young White/Non-Hispanic and Black/Non-Hispanic voters.

The results shed additional light on the effects of voter identification requirements on two groups often projected as being particularly sensitive to such requirements: African-American voters and elderly voters. The effects on African-American voters were pronounced for two specific sub-samples: African-American voters living below the poverty line and those in the 18- to 24-year-old age group. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[14] Or, do the requirements result in some voters

---

[14] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not

being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

---

registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.6 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1%	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.64	0.01	0.69	0.02
Voter ID requirements	-0.01**	0.003	-0.03**	0.004
Battleground State	0.04*	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.48**	0.03	0.50**	0.03
% African-American	0.05**	0.01	0.06	0.03
% Hispanic	-0.02	0.01	-0.13**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8638.0		-8651.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

	Basic Model		Model with Interactions	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	0.63	0.02	0.66	0.02
Voter ID requirements	-0.009	0.005	-0.02**	0.006
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.48**	0.03	0.48**	0.03
% African-American	0.05**	0.01	0.04	0.03
% Hispanic	-0.12	0.01	-0.13**	0.04
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	0.01	0.01
VID * Hispanic	----	----	0.03*	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8630.8		-8620.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (two-tailed tests)

Table 4. Probit model of voter turnout.

	Maximum requirements		Minimum requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard error**
Voter ID requirements	-0.04*	0.01	-0.05**	0.01
Hispanic	-0.06	0.05	-0.05	0.05
Black	0.22**	0.04	0.22**	0.04
Other race	-0.23**	0.04	-0.23**	0.04
Age in years	0.01**	0.001	0.01**	0.001
Education	0.12**	0.005	0.11**	0.005
Household income	0.03**	0.003	0.03**	0.003
Married	0.20**	0.02	0.20**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.18**	0.04	0.19**	0.04
Competitive race	0.05	0.05	0.05	0.05
Employed	0.05	0.04	0.05	0.04
Member of workforce	-0.04	0.05	-0.04	0.05
Native-born citizen	0.03	0.04	0.04	0.05
Moved within past 6 months	-0.27**	0.03	-0.27**	0.03
Constant	-4.48**	0.20	-4.46**	0.20
Pseudo-R-Squared	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05* p < .01** (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Predicted probability of voter turnout – full model		
	Maximum requirement	**Minimum requirement**
State name	0.912	0.911
Sign name	0.906	0.903
Match signature	0.900	0.895
Non-photo ID	0.894	0.887
Photo ID	0.887	----
Affidavit	----	0.878
Total difference from lowest to highest	0.025	0.033
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

	White/Non-Hispanic voters		Hispanic voters
	Maximum requirement	**Minimum requirement**	**Minimum requirement**
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups

	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.795	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference -- lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 8. Predicted probability of voter turnout – Age groups by race

	White/Non-Hispanic 18 - 24		Black/Non-Hispanic 18 – 24
	Maximum requirements	Minimum requirements	Maximum requirements
State name	0.844	0.836	0.899
Sign name	0.823	0.818	0.877
Match signature	0.801	0.799	0.852
Non-photo ID	0.777	0.779	0.824
Photo ID	0.752	----	0.793
Affidavit	----	0.758	----
Total difference -- lowest to highest	0.092	0.078	0.106
N	3,814		562

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Minimum voter identification requirements were not a significant predictor of voting for Black/Non-Hispanic voters ages 18 to 24. Maximum and minimum voter identification requirements were not a significant predictor of voting for Hispanic voters ages 18 to 24.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 9. Predicted probability of voter turnout – Voters above and below the poverty line

	All voters above the poverty line		**All voters below the poverty line**	**Black/Non-Hispanic voters below the poverty line**
	Maximum requirement	**Minimum requirement**	**Minimum requirement**	**Maximum requirement**
State name	0.920	0.922	0.784	0.833
Sign name	0.915	0.915	0.772	0.816
Match signature	0.909	0.907	0.758	0.798
Non-photo ID	0.903	0.899	0.745	0.778
Photo ID	0.897	----	----	0.758
Affidavit	----	0.891	0.731	
Total difference from lowest to highest	0.023	0.031	0.053	0.075
N	49,935		5,038	1,204

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for white and Hispanic voters who were below the poverty line. Minimum voter identification requirements were not a significant predictor of voting for Black voters below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 10. Predicted probability of voter turnout – By education

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Karen Lynn-Dyson/EAC/GOV
05/09/2006 10:04 AM

To "Tom O'neill" [redacted]
cc john.weingart@rutgers.edu, tokaji.1@osu.edu
bcc Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: Voter ID Report and Appendices

Thanks, Tom.

Assume you just got the e-mail I sent to the EAC review team that included the paper, the analysis and the call-in information

Thursday at 11:30
1-866-222-9044
Passcode 62209#

A few items on timelines and materials for May 23-24 meetings:

The Commissioners will review the final Eagleton Voter ID and Provisional Voting reports at their **Tuesday, May 16** meeting. At this meeting they will decide how they wish to present these reports to the EAC Board of Advisors and Standards Boards.

Your materials that will be distributed to the EAC Board of Advisors and Standards Boards must be finalized and ready for our Xeroxing process by **Thursday, May 18.** I will be in touch along the way to provide input/guidance on what these materials should be, based on the Commissioner's review and decisions

Regards-

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/09/2006 03:58 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Aletha Barrington/CONTRACTOR/EAC/GOV@EAC, berinsky@mit.edu, jonathan.nagler@nyu.edu, leighley@email.arizona.edu, [redacted]
bcc
Subject Re: Materials for Thursday's 11:30 conference call

Greetings-

Please note that Thursday's call is at 11:30 EDT.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
05/09/2006 09:54 AM

To berinsky@mit.edu, leighley@email.arizona.edu, jonathan.nagler@nyu.edu, [redacted]
cc Aletha Barrington/CONTRACTOR/EAC/GOV@EAC
Subject Materials for Thursday's 11:30 conference call

All-

Attached please find the complete packet of materials that will serve as the basis for our conference call on Thursday. You have already received the statistical analysis; the voter ID report was submitted this morning.

The Eagleton staff have noted that you may find the material contained in Appendix A useful to your review; the other appendices are likely to be less germane .

The call in information for Thursday:

1-866-222-9044
Passcode 62209#

Thank you again for your assistance.

Regards-

Eagleton Voter ID report-final.doc VoterIDAnalysis VercRev0504.doc Karen Lynn-Dyson

Research Manager

U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/10/2006 04:44 PM

To "Tom O'neill" [redacted]
Adam Ambrogi/EAC/GOV@EAC
cc foley.33@osu.edu, john.weingart@rutgers.edu, "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, tokaji.1@osu.edu
bcc Thomas R. Wilkey/EAC/GOV@EAC
Subject RE: Travel arrangements for the EAC Board of Advisors and Standards Board meeting

Tom-

It is my understanding that Adam Ambrogi has been in touch with Ned Foley and, in turn, Dan Tokaji to indicate that you and Dan will present the information on the Voter ID project, while you and Ned will present the information on the Provisional Voting project.

Adam Ambrogi can also clarify your presentations. As I understand it, you will present your Voter ID and Provisional Voting projects to the Standards Board. You will then present your Voter ID and Provisional Voting Projects to the Board of Advisors.

I believe Adventure Travel handles hotel and travel arrangements.

I do not believe accommodations have been made for other members of the project team to attend. I will ask Adam Ambrogi, who is the principal point of contact on these meetings, to clarify this.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

"Tom O'neill"
[redacted]
05/10/2006 10:12 AM

To klynndyson@eac.gov
cc john.weingart@rutgers.edu, tokaji.1@osu.edu, foley.33@osu.edu, "Tim Vercellotti" <tim.vercellotti@rutgers.edu>
Subject RE: Travel arrangement for the EAC Board of Advisors and Standards Board meeting

Karen,

As we discussed last week, the Eagleton-Moritz team making the presentations at the advisory board meetings will include others in addition to Ned and me. While Ned and I will handle the briefing on the provisional voting report, the team for the briefing on the Voter ID report will include Dan Tokaji and Tim Vercellotti.

Just to understand what Adventure Travel is to provide: will its services include hotel reservations and travel, or does it have a more limited mission?

Thanks,

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Tuesday, May 09, 2006 4:34 PM
To: klynndyson@eac.gov
Cc: john.weingart@rutgers.edu; Tom O'neill
Subject: Re:Travel arrangement for the EAC Board of Advisors and Standards Board meeting

Tom O' Neill and Ned Foley-

As you know you are scheduled to make two presentations to the EAC Board of Advisors and Standards Board on Tuesday May 23, 2006 from 2:30-4:00 PM (on Provisional Voting) and on Wednesday ,May 24th from 1:40-2:45 PM (on Voter Identification)

If you have not already done so, please make your hotel and travel arrangements through Adventure Travel, Judy Mays 205-444-4833[redacted]

These reservations should be made no later than tomorrow COB.

Please indicate to Judy Mays that you are a contractor, who is scheduled to make a presentation at the meeting.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/11/2006 12:57 PM

To "Tom O'neill" [redacted]
cc ireed@rutgers.edu, john.weingart@rutgers.edu, "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, tokaji.1@osu.edu
bcc Bert A. Benavides/EAC/GOV@EAC; Thomas R. Wilkey/EAC/GOV@EAC; Donetta L. Davidson/EAC/GOV@EAC
Subject Re: Thank you and moving into the home stretch

Tom et.al-

Many, many thanks to you and the staff for your active participation and support in what I found to be an extremely helpful and productive hour.

Special thanks to Tim for his openness to new approaches and to all the hard work he is doing with running these numbers (ad infinitum).

The touch questions-

1. Realistically, when should I expect your final VOTER ID paper to present to the Commissioners?
2. Can I expect your final Provisional Voting Paper by tomorrow COB?

Thanks again for your fine efforts.

K
the $ Commissioners

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/11/2006 01:17 PM

To "Tom O'neill" [redacted]
cc Bert A. Benavides/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject RE: Receipt of Final Eagleton papers for Commissioner review

Many thanks , Tom-

I will pass this schedule on to the Executive Director's office.

We will put final review of the Provisional Voting paper on the Commissioner's Tuesday meeting schedule (May 16) and the Voter ID paper on Thursday's meeting (May 18)

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

"Tom O'neill"
[redacted]
05/11/2006 01:09 PM

To klynndyson@eac.gov
cc
Subject RE: Thank you and moving into the home stretch

Karen: You will have the Provisional Voting paper tomorrow. Tim will rework his paper and have a new version to me (using the dummy variable approach) on Monday. I will have a report that incorporates the new work (with our original approach described in an appendix) to you late Tuesday. Does that work with the Commission's schedule for review of the paper?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, May 11, 2006 12:58 PM
To: tom_oneill@verizon.net
Cc: ireed@rutgers.edu; john.weingart@rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu
Subject: Re: Thank you and moving into the home stretch

Tom et.al-

Many, many thanks to you and the staff for your active participation and support in what I found to be an extremely helpful and productive hour.

Special thanks to Tim for his openness to new approaches and to all the hard work he is doing with running these numbers (ad infinitum).

The touch questions-

1. Realistically, when should I expect your final VOTER ID paper to present to the Commissioners?
2. Can I expect your final Provisional Voting Paper by tomorrow COB?

Thanks again for your fine efforts.

K
the $ Commissioners

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/11/2006 01:22 PM

To leighley@email.arizona.edu@GSAEXTERNAL
cc
bcc Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: Many thanks for your active participation

Dr. Leighley-

On behalf of the EAC our sincere thanks for your willingness to review the Eagleton paper on Voter Identification. You insights and critique were extremely helpful and provided our agency with just the type of input which was needed.

I'm please to know of your work and hope that I may be able to call upon your expertise at some point in the near future.

Regards-

Karen
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/11/2006 01:26 PM

To jonathan.nagler@nyu.edu@GSAEXTERNAL
cc
bcc Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: Fw: Many thanks for your active participation

Dr. Nagler-

On behalf of the EAC, our sincere thanks for your willingness to review the Eagleton paper on Voter Identification. Your insights and critique were extremely helpful and provided our agency with just the type of input which was needed.

I'm pleased to know of your work and hope that I may be able to call upon your expertise at some point in the near future.

Regards-

Karen

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/11/2006 01:30 PM

To "Adam Berinsky" <berinsky@MIT.EDU>@GSAEXTERNAL
cc
bcc Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: Many thanks for your active participation

Dr. Berinsky-

On behalf of the EAC, our sincere thanks for your willingness to review the Eagleton paper on Voter Identification. Your insights and critique were extremely helpful and provided our agency with just the type of input which was needed.

I'm pleased to know of your work and hope that I may be able to call upon your expertise at some point in the near future.

Regards-

Karen

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/11/2006 03:51 PM

To "Jonathan Nagler" <jonathan.nagler@nyu.edu>
cc
bcc Donetta L. Davidson/EAC/GOV@EAC
Subject Re: Fw: Many thanks for your active participation

Jonathan-

Indeed, this is something several of the EAC staff noted.

As the EAC moves forward, I think that including a longitudinal component to our studies, to the extent possible, is a must.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Jonathan Nagler" <jonathan.nagler@nyu.edu>

"Jonathan Nagler"
<jonathan.nagler@nyu.edu>
05/11/2006 03:48 PM
Please respond to
"Jonathan Nagler"
<jonathan.nagler@nyu.edu>

To klynndyson@eac.gov
cc "jonathan nagler" <jonathan.nagler@nyu.edu>
Subject Re: Fw: Many thanks for your active participation

Karen,

hi. My own take on this is that we would get a much better idea of the impact of reforms if we had a database of how those reforms changed over time. Looking across states is always going to be problematic.

-jonathan

On Thu, 11 May 2006 klynndyson@eac.gov wrote:

>
> Dr. Nagler-
>
> On behalf of the EAC, our sincere thanks for your willingness to review the
> Eagleton paper on Voter Identification. Your insights and critique were
> extremely helpful and provided our agency with just the type of input which
> was needed.
>
> I'm pleased to know of your work and hope that I may be able to call upon
> your expertise at some point in the near future.
>

> Regards-
>
> Karen
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
>
>

##
Jonathan Nagler
jonathan.nagler@nyu.edu
Director of Graduate Studies
Department of Politics Voice (o):
212 992-9676
726 Broadway - 7th floor Fax: 212
995 4184
New York University
http://homepages.nyu.edu/~jn23/
New York, NY 10003
##

Karen Lynn-Dyson/EAC/GOV
05/12/2006 01:36 PM

To "Tom O'neill" [redacted]
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC
bcc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC; Thomas R. Wilkey/EAC/GOV@EAC
Subject RE: Eagleton/Moritz presentations at the upcoming Board of Advisors and Standards Board meetings

Tom-

To reiterate the details of our discussion:

By May 17 I will have received all of the materials you wish distributed to the EAC Board of Advisors and Standards Boards. You have indicated that this will be the Provisional Voting paper and the Voter ID paper, only.

On Tuesday, May 23 from 2:30-4:00 PM, Tom O'Neill and Ed Foley will present the Provisional Voting report to the EAC Standards Board. Julie Thompson-Hodgkins will be the resource person for that session
On Wednesday, May 24 from 1:40-2:45 PM, Tom O'Neill, Dan Tokaji, and Tim Vercellotti will present the Voter Identification report to the EAC Standards Board. Julie Thompson-Hodgkins will be the resource person for that session.

On Wednesday , May 24 from 8:30-9:15 am, Tom O'Neill and Ed Foley will present the Provisional Voting report to the EAC Board of Advisors. Julie Thompson-Hodgkins will be the resource person for that session.
On Wednesday, May 24 from 11:00-11:55 am, Tom O'Neill, Dan Takaji and Tim Vercellotti will present the Voter Identification report to the EAC Board of Advisors. Julie Thompson-Hodgkins will be the resource person for that session.

If you have further questions regarding the details of these sessions, please do not hesitate to contact me.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/12/2006 05:28 PM

To "Tom O'neill" <[redacted]
cc
bcc
Subject Re: PV Final Draft for Review by Advisory and Standards Boards

Many thanks for getting this to me. I will let you know the outcome of Tuesday's Commissioner discussion.

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/16/2006 12:06 PM

To "Tom O'neill" [redacted]
cc john.weingart@rutgers.edu, "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, tokaji.1@osu.edu
bcc
Subject Re: PV Final Draft for Review by Advisory and Standards Boards

Tom-

Have just completed the Commissioner's review and discussion of the Provisional Voting paper.

They are ready for it to be presented to the EAC Boards and it will be considered as a consultant's report to the EAC. Several typos/grammatical errors were found in the report; you may want to do a final check before you send it to me for final distribution.

Also, the Commissioner's have requested that you all plan to do a 10 minute presentation of this report, leaving the remainder of the time for questions and answers from the Boards.

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

05/17/2006 09:34 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, twilkey@eac.gov

cc Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC,

bcc

Subject Fw: Voter ID Report and Appendices

Commissioners-

Attached please find the Eagleton report on Voter Identification which has just been received.

I look forward to our discussion of this item at Thursday's meeting.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 05/17/2006 09:31 AM -----

"Tom O'neill"
[redacted]

05/17/2006 09:25 AM

To klynndyson@eac.gov

cc tokaji.1@osu.edu, foley.33@osu.edu, [redacted] "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>

Subject Voter ID Report and Appendices

Karen,

Attached for review by the Commissioners is the Voter ID Report and its appendices. The appendices are lengthy, but I believe Appendix A should be included in the report sent to the Advisory Boards for review.

Thanks for your forbearance.

Tom O'Neill

Appendices517.doc VoterIDReport05170910.doc

Appendices

a. Summary of Voter ID Requirements by State

b. Summary of case law on Voter ID issues

c. Vercellotti --Analysis of Effects of Voter ID Requirements on Turnout

d. Indexed database of major articles on Voter ID Requirements and related topics

e. Compendium of states' legislation, procedures, and litigation (available as an electronic document)

Appendix A

Summary of Voter Identification Requirements By State

Prepared by
Sara A. Sampson, Reference Librarian,
The Ohio State University Moritz College of Law.

Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification: (1) A current valid photo identification. (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following: a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification. b. A valid United States passport. c. A valid Alabama hunting or fishing license. d. A valid Alabama permit to carry a pistol or revolver. e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States. f. A valid United States military identification card. g. A certified copy of the elector's birth certificate. h. A valid Social Security card. i. Certified naturalization documentation. j. A certified copy of court records showing adoption or name change. k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card"). (c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b). (e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law. (f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs. Effective Date: June 24, 2003	Ala. Code § 17-11A-1
Alaska	Provide ID	(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including (1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or (2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this	Alaska Stat. § 15.15.225

		paragraph must show the name and current address of the voter. (b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under AS 15.07.050, and did not provide identification as required in AS 15.07.060. (c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot. effective June 17, 2003	
Arizona	Provide ID	B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot: 1. The person shall present either one of the following: (a) A current form of identification that bears a photograph of the person and the name of the person. (b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person. 2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584. Effective Dec. 1, 2003	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	7-5-305. Requirements. (a) Before a person is permitted to vote, the election official shall: (1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list; (2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth; (3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list; (4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate; (5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct. (B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files. (C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct; (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files; (7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and	Arkansas Code Annotated § 7-5-305

		(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card. (B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification. (ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney. (iii) The prosecuting attorney may investigate possible voter fraud; and (9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the preson is a disabled voter and presents himself or herself to vote. Effective: July 16, 2003	
California	Sign Name	Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article. (Enacted in 1994, no amendments since)	Cal. Elec. Code § 14216
Colorado	Provide ID	(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges, * * * (4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title. (19.5)(a) "Identification" means: (I) A valid Colorado driver's license; (II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.; (III) A valid United States passport; (IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state; (V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States; (VI) A valid United States military identification card with a photograph of the eligible elector; (VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector; (VIII) A valid medicare or medicaid card issued by the United States health care	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

		financing administration; (IX) A certified copy of a birth certificate for the elector issued in the United States; or (X) Certified documentation of naturalization. (b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado. Effective 5/28/2004	
Connecticut	Provide ID	(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate. Effective May 10., 2004	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record. Effective: July 9, 2002	15 Del. Code § 4937
D.C.	Sign Name	(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection. (2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the	D.C. Code § 1-1001.07

		polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection. (3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records. (Effective April 3, 2001)(not added as part of 2005 amendment)	
Florida	Photo ID	101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector. (2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49. **97.0535** (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired: 1. Florida driver's license. 2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles. 3. United States passport. 4. Employee badge or identification. 5. Buyer's club identification. 6. Debit or credit card. 7. Military identification. 8. Student identification. 9. Retirement center identification. 10. Neighborhood association identification. 11. Entertainment identification. 12. Public assistance identification. (b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant: 1. Utility bill.	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535

		2. Bank statement. 3. Government check. 4. Paycheck. 5. Other government document (excluding voter identification card). Version effective 1/1/2005-12/31/2005	
Georgia	Provide ID	(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following: (1) A valid Georgia driver's license; (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification; (3) A valid United States passport; (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state; (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business; (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; (7) A valid Georgia license to carry a pistol or revolver; (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States; (9) A valid United States military identification card; (10) A certified copy of the elector's birth certificate; (11) A valid social security card; (12) Certified naturalization documentation; (13) A certified copy of court records showing adoption, name, or sex change; (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector; (15) A bank statement, or a legible copy thereof, showing the name and address of the elector; (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or (17) A government document, or a legible copy thereof, showing the name and address of the elector. (b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement." effective June, 2003	Ga. Code. Ann. § 21-2-417

Hawaii	Photo ID	(b) The voter shall present valid identification to the official in charge of the pollbook. ***Do I Need an I.D. to Vote on Election Day?*** **Yes.** Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification. From the 2004 version of the administrative code. **§ 11-136 Poll book, identification, voting.** Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person. After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. Last amended 2003.	Haw. Code. R. § 2-51-80 (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b) Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix HRS 11-136
Idaho	Sign Name	(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book. (2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein. (5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. (Last amended in 1972)	Id. St. §34-1106
Illinois	Give Name	Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he	10 Ill. Comp. Stat. 5/17-9

		shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.	
Indiana	Sign Name		West's Annotated Indiana Code § 3-11-8-25
Iowa	Sign Name	1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form: VOTER'S DECLARATION OF ELIGIBILITY I do solemnly swear or affirm that I am a resident of the .... precinct, ... ward or township, city of ...., county of ...., Iowa. I am a registered voter. I have not voted and will not vote in any other precinct in said election. I understand that any false statement in this declaration is a criminal offense punishable as provided by law. ____________________ Signature of Voter ____________________ Address ____________________ Telephone Approved:	Iowa Code § 49.77

		Board Member 2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials. 3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner. A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote. (From 2004 version of Iowa Annotated Code; effective January 1, 1995)	
Kansas	Sign Name	(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention. (Approved April 14, 2004, 2004 Kansas Laws Ch. 93)	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	117.227 Confirmation of voter's identity Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification. Effective: 7/15/02 31 KAR 4:010. Voter identification cards. Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.	Ky Rev. Stat. Ann. 117.227 31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	A. Identification of voters. (1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place. (2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant	La. Rev. Stat. Ann. 18:562

		shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565. Effective: 1/1/2002	
Maine	Give Name	The voting procedure is as follows. 1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice. (In effect at time of 2003 amendment: 2003, c. 584, § 9)	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	10-310. (a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall: (1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot; (2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or (ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article; (3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register; (4) verify the address of the voter's residence; (5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and (6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.	Md. Elec. Law § 10-310
Mass.	Give Name	Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited. Last amended in 1981 (5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).	Mass. Ann. Laws 54 § 76 950 Mass. Code Regs. 52.03
Michigan	Sign Name	(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state	Mich. Comp. Laws Ann. §

		identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727. (2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector. The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies. (Effective March 31, 1997)	168.523
Minnesota	Sign Name	(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not	Minn. Stat. § 204C.10

		more than $10,000, or both." (b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth. (c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest. (Effective January 1, 2004)	
Mississippi	Sign Name	* * * When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance. (Effective January 1, 1987)	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list: (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state; (2) Identification issued by the United States government or agency thereof; (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri; (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; (5) Driver's license or state identification card issued by another state; or (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose. (Last amended in 2002)	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address. (From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [Unrelated section was amended in 2005])	Mont. Code. Ann. §13-13-114(1)(a)
Nebraska	Sign Name	(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document. (Last amended in 2003) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter. (Last updated in 2003)	Neb. Rev. Stat. § 32-913 Neb. Rev. Stat. § 32-914
Nevada	Match Sig.	1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2. 2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are: (a) The card issued to the voter at the time he registered to vote; (b) A driver's license; (c) An identification card issued by the Department of Motor Vehicles; (d) A military identification card; or	Nev. Rev. Stat.§ 293.277

		(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture. Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers. b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery. c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5). Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

		case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list. E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot. G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster. (From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)	(Recompiled as §1-12-7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)
New York	Match Sig.	1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith. 2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election. 3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature. 4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the	N.Y. Law § 8-304 (McKinney)

		space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record. 5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same Last Amended 1986	
North Carolina	Give Name	(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook. 1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address. (From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark. The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot. (Effective at time of last update, 1992 H 182, eff. 4-9-93)	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry. (Last amended in 1990) Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours. (Last amended in 1990)	Okla. Stat. Ann. tit. 26, § 7-114 Okla. Stat. Ann. tit. 26, § 7-117
Oregon	Match Sig.	All elections in Oregon are Vote by Mail. An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity (http://www.uhavavote.org/votingguide/votebymail.html) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register. (In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))	
Rhode Island	Give Name	(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form: BALLOT APPLICATION (Poll List) Senatorial District ____________________ Representative District ____________ Voting District ________________________ Election Date ____________________________________ I hereby certify that I am a registered and qualified elector in the above voting district of City of and hereby make application for ballots to be voted at this election. ____ (Signature of Voter) ____ (Residence Address) Number Approved __________________________ (Supervisor of Election)	R.I. Gen. Laws § 17-19-24

		(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time. (Last amended 2004, Current through January 2005 Session)	
South Carolina	Photo ID	**§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.** When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5- 125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers. Last amended: 1968	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either: (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or	S.D. Codified Laws § 12-18-6.1

		technical school, located within the State of South Dakota. Last amended March 2004	
Tennessee	Provide ID	Identification of eligible voters (a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet. (2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists: (A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar; (B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list; (C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and (D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission. Last amended 2003	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place. (Last amended in 1997)	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges. (b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district. (3) If the election judge determines that the voter is registered: (a) the election judge in charge of the official register shall: (i) write the ballot number opposite the name of the voter in the official register; and	Utah Code Ann. § 20A-3-104

		(ii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter's name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) hand the voter a ballot; and (iv) allow the voter to enter the voting booth. (In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)	
Vermont	Give Name	Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and: (1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting. (2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting (Last amended in 2003)	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him. B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business. If the voter's name is found on the pollbook, if he presents one of the forms of	Va. Code. Ann.

		identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement. (Version in effect as of 2004- effective 4/12/2004)	
Washington	Sign Name	29A.44.201. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. (In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004) 29A.44.210. Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter. The precinct election officers shall then record the voter's name. Effective date: July 1, 2004	Wash. Rev. Code § 29A.44.201 & 29A.44.210
West Virginia	Match Sig.	(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon. * * * (c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the	W. Va. Code § 3-1-34 (a)

		election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter. (In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)	
Wisconsin	Give Name	6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number. (In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)	Wis. Stat. § 6.79
Wyoming	Give Name	(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22- 15-109, no identification shall be required when: (i) Voting in person or by mail after having registered in person; or (ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election. (In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)	Wyo. Stat. Ann. § 22-3-118

APPENDIX B –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:
Challenges Prevailed:
American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to "complete" a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14th Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14th Amendment EPC: likely to prevail

Greidinger v. Davis, 1993

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
    - 14th Amendment EPC: no classification (applied strict scrutiny)
    - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
        - Compelling interests: preventing voter fraud (deemed compelling)
        - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
        - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

Challenges Rejected:
League of Women Voters v. Blackwell, 2004.

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

Colorado Common Clause v. Davidson, 2004

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
    - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
    - Substantive due process and equal protection
        - No improper discrimination

    - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
    - Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
    - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
    - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
    - Substantive due process: ruled that internal use of SS# not a burden
    - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
    - P&I, Article IV: does not protect in-state citizens
    - P&I, 14th Amend.: no protection for privilege where Congress authorized its infringement

Kemp v. Tucker, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
    - VRA: ruled that race was not made a "qualification" for voting
    - 15th Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
    - 14th Amendment EPC: ruled there was no distinction among voters

Perez v. Rhiddlehoover, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
    - VRA: ruled that it was not a "test or device" because it applied equally
    - 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:

American Civil Liberties Union of Minnesota v. Kiffmeyer, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004).

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at *3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at *10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

Current Litigation Concerning Voter ID Issues[1]

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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[1] As of January 2, 2006

Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)[2]. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.[3] As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

Indiana (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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[2] Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php

[3] GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.[4] The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves theses decisions to state law. 42 U.S.C. § 15482(a).

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[4] According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

Appendix C

Analysis of Effects of Voter Identification Requirements on Turnout

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May 16, 2006

Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen turnout among those eligible to vote. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater based on specific types of requirements. Critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card, such as a driver's license. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. This report draws from two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

Types of voter identification requirements

Based on research by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (10 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[5] It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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[5] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I also tested the array of minimum identification requirements to assess whether they posed increasing levels of demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

Estimating turnout among citizens in the voting-age population

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.[6]

Analysis of aggregate data

If one treats maximum voter identification requirements as a continuous variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter

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[6] McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

identification requirements ($r = -.30$, $p < .05$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ($r = -.20$, $p = .16$). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.2 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, I opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.[7]

Voter identification requirements alone do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county.

I coded the voter identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus I added a variable to reflect the number of days between each state's registration deadline and the election.[8]

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[7] Treating maximum voter identification requirements as a continuous variable yielded results in which voter identification requirements were negatively related to aggregate turnout. Those results can be found in Table A-1 in the Appendix to this report.

[8] For states that had Election Day registration or no registration requirement (North Dakota), I assigned a value of zero to this variable.

Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the median household income for 2002 in each county.[9]

I estimated a series of random effects models to account for the likelihood that data from counties were correlated within each state (for further explanation of random effects and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).[10] I allowed the median income variable to have both fixed and random effects in each state to take into account variation in the cost of living in each state. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, two of the four requirements had a small and negative effect on turnout in 2004: matching one's signature and providing a non-photo identification. Taking into account the reference variable of stating one's name, the results indicate that turnout was lower in states that required signature matches or a non-photo identification than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Two contextual factors -- whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate-- increased voter turnout. The time between the closing date for registration and the election had a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income had positive effects on turnout. The percentage of African-Americans in the county did not have a significant effect.

The effects of the minimum voter identification requirements were non-existent. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to have a negative effect on turnout, as did the number of days between the closing date for registration and the election.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2),

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[9] To bring the income figures into a scale comparable to those of the other variables, I used the natural log of median household income.

[10] The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

showed no significant improvement by including the interactions ($p > 0.05$). I report the coefficients for the models with the interactions in the Appendix in tables A-2 and A-3.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the identification requirements for voting vary, so does turnout. Specifically, in terms of the maximum requirements, the results suggest that requiring a signature match or non-photo identification is negatively related to turnout compared to requiring that a voter state his or her name. But the analysis showed that adding interactions between identification requirements and the percentage of the county that was African-American or Hispanic did not improve the fit of the model to the data.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[11] Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[12] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[13] As in the analysis of aggregate data, I coded the voter

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[11] A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

[12] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

[13] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown

identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.[14]

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less.[15] At the individual level, I controlled for gender, household income, and dummy variables for race/ethnicity, age and education. In terms of race and ethnicity, I created dummy variables to represent whether a voter was Black/non-Hispanic, Hispanic, or Asian (with white/non-Hispanic/other voters as the omitted category for reference purposes). I separated education into five dummy variables: less than high school, high school diploma, some college, college graduate, and graduate training. I omitted the "less than high school" variable from the model for reference purposes. Regarding age, I created four dummy variables to represent 18 to 24 years of age, 29 to 44, 45 to 64, and 65 years and older. I omitted the 18-to-24 category as the reference variable in the model.

Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

Results

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that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[14] Earlier versions of this paper included an individual-level analysis that included the five maximum voter identification requirements combined into a continuous variable. The results of that analysis, which found that voter identification requirements had a negative relationship with turnout, can be found in table A-4 in the Appendix.

[15] Given that the individual-level analysis focused on registered voters (as opposed to the citizen voting-age population in the aggregate analysis), I did not include the closing date for registration as a predictor of turnout in the individual-level analysis.

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 3 here]

The two models in Table 3 use either the maximum or minimum voter identification requirements in each state. The two models generate similar results. In each model, three of the voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. In other words, compared to states that require voters only to state their names, the requirements to sign one's name, provide a non-photo identification, photo identification in the maximum requirements or affidavit in the minimum requires exert a negative influence on turnout.

Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had finished high school. Respondents who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.[16] I calculated the probabilities taking into account both maximum and minimum requirements.

[Table 4 here]

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability appear to decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[17] In terms of the

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[16] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[17] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of

minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter identification requirements. But incorporating dummy variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, I divided the sample into sub-samples and re-ran the probit models.

[Table 5 here]

The effects of voter identification requirements were similar for white voters compared to the entire sample, which was not surprising given that white voters comprised 81 percent of the sample. Voters in states where the maximum requirement involved signing one's name, providing a non-photo identification or photo identification were less likely to vote than those in a state that required voters to give their names. Taking into consideration the minimum requirements, this was true only for voters in states that require a non-photo identification or an affidavit. White voters in photo identification states were 3.7 percent less likely to vote than were white voters in states where respondents gave their names. The difference in probability was 4.4 percent for voters in states where an affidavit was the minimum requirement.

Voter identification requirements also influenced turnout among Black voters, but to a lesser extent relative to white voters.

[Table 6 here]

Of the maximum voter identification requirements, only the non-photo identification requirement reduced turnout compared to turnout in states that required voters to state their names. The predicted probability of voting was 5.7 percent lower for Black respondents in states that required non-photo identification. In terms of age, only African-Americans age 65 and older were more likely to vote than respondents in the 18 to 24 referent group. Respondents in all levels of education were more likely to vote than respondents without a high school diploma. Gender, income, living in a battleground state, being a part of the workforce and having been born in the United States also were positive predictors. Recent mobility tended to lower the probability of voting. None of the minimum identification requirements had a significant effect on voting, while most of the remaining variables had effects similar to those in the maximum requirement model.

<u>all</u> citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

Hispanic voters also were less likely to vote in states that required non-photo identification as opposed to stating one's name.

[Table 7 here]

Using the coefficients from Table 7 to calculate predicted probabilities, for both the maximum and minimum requirements, Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. Hispanic voters ages 45 to 64 and 65 and over were more likely to vote than their 18-to-24-year-old counterparts. Education and income also were positive predictors of voting. Interestingly, being a native-born citizen lowered the probability of voting, while native-born citizenship was a positive predictor for African-American voters and was not a predictor at all for white voters. It may be that naturalized citizens of Hispanic descent are more conscious of the value of voting rights than other groups.

Varying voter identification requirements influenced Asian-American voters as well. As with Hispanic and Black voters, Asian-American voters were less likely to turn out in states with non-photo identification requirements than in states where voters gave their names.

[Table 8 here]

Using the probit coefficients to calculate predicted probabilities, Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement. Asian-American voters also were 2.2 percent less likely to vote when signatures were the maximum requirement compared to stating one's name.

In terms of other predictors, there were no significant differences in terms of age or income. In contrast to Hispanic voters, where one was a naturalized or natural-born citizen did not affect the probability of voting. Those with high school or college diplomas or graduate training were more likely to turn out than those with less than a high school diploma. Women and married voters also were more likely to turn out than men and voters who were note married.

Discussion and conclusion

The results presented here provide evidence that as voter identification requirements vary, voter turnout does as well. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

In the aggregate data, requirements that voters match signatures on file, provide a non-photo identification or photo identification had negative effects on turnout compared to requiring that voters state their names. Interactions with specific groups – African-Americans and Hispanics – did not improve the fit of the aggregate data to the models. But differences emerged among specific groups in the individual-level data. The signature, non-photo identification and photo identification requirements all had negative effects compared to the requirement that voters simply state their names. These effects translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For

example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters (the gap widened to 3.7 percent for white voters when comparing photo identification to simply stating one's name).

That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements. This begs the question as to why photo identification requirements did not have a greater influence in 2004. It may have been due to the fact that photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?[18] Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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[18] The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using the November 2004 Current Population Survey data and voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Of all of the voter identification requirements, only requiring signatures or matching signatures had a significant effect on whether a respondent said he or she was registered to vote in 2004. In each instance the effect was negative.

References

Alvarez, R. Michael, and Stephen Ansolabehere. (2002). *California Votes: The Promise of Election Day Registration.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/california_votes.pdf

Alvarez, R. Michael, Jonathan Nagler, and Catherine H. Wilson. (2004). *Making Voting Easier: Election Day Registration in New York.* New York: Demos. Retrieved online Feb. 23, 2006 at http://www.demos.org/pubs/EDR%20-%20NY%20report%20b&w%20-%20Aug%202004.pdf

Baxter, Tom, and Jim Galloway. (2005). Latinos weigh in on voter ID debate. *The Atlanta Journal-Constitution*, March 21, 2005, p. 2-B.

Bryk, Anthony S., and Stephen W. Raudenbush. (1992). *Hierarchical Linear Models: Applications and Data Analysis Methods.* Newbury Park, CA: Sage Publications.

Electionline.org. (2002). *Election Reform Briefing: Voter Identification.* Washington, D.C.: Electionline.org.

Filer, John E., Lawrence W. Kenny, and Rebecca B. Morton. (1993). Redistribution, income, and voting. *American Journal of Political Science*, 37:63-87.

Flanigan, William H., and Nancy H. Zingale. (2002). *Political Behavior of the American Electorate, 10th Ed.* Washington, DC: CQ Press.

Jacobs, Sonji. (2005). Legislature '05: Black lawmakers plot path in photo ID fight. *The Atlanta Journal-Constitution*, March 24, 2005, p. 1-C.

Leighley, Jan E. and Arnold Vedlitz. (1999). Race, ethnicity, and political participation: Competing models and contrasting explanations. *The Journal of Politics*, 61(4):1092-1114.

Long, J. Scott. (1997). *Regression Models for Categorical and Limited Dependent Variables.* Thousand Oaks, CA: Sage Publications.

Luke, Douglas A. (2004). *Multilevel Modeling.* Thousand Oaks, CA: Sage Publications.

McDonald, Michael P., and Samuel L. Popkin. (2001). The myth of the vanishing voter. The American Political Science Review, 85:963-974.

Mitchell, Glenn E., and Christopher Wlezien. (1995) The impact of legal constraints on voter registration, turnout, and the composition of the American electorate. *Political Behavior*, 17:179-302.

Nagler, Jonathan. (1991). The effect of registration laws and education on U.S. voter turnout. *The American Political Science Review*, 85:1393-1405.

Singer, J.D. (1998). Using SAS PROC MIXED to fit multilevel models, hierarchical models, and linear growth models. *Journal of Educational and Behavioral Statistics*, 24:323-355

U.S. Census Bureau. (1990). *Studies in the Measurement of Voter Turnout.* Retrieved online March 13, 2006, at http://www.census.gov/population/socdemo/voting/p23-168.

U.S. Census Bureau. (2005). U.S. voter turnout up in 2004, Census Bureau Reports. News release issued May 26, 2005. Retrieved online March 13, 2006 at http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html

U.S. Election Assistance Commission. (2005) Election Day Survey. Retrieved online March 28, 2006 at http://www.eac.gov/election_survey_2004/html/EDS-chap%201%20pop%20estimates2.htm.

Wolfinger, Raymond E., and Steven J. Rosenstone. (1980). *Who Votes?* New Haven, CT: Yale University Press.

Young, Virginia. (2006). ID foe says bill smacks of "Jim Crow" era. *The St. Louis Post-Dispatch*, Feb. 14, 2006, p. B-1.

Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	**Mean Voter Turnout for States in that Category**	**Voter Identification Required in the States**	**Mean Voter Turnout for States in that Category**
State Name	64.2 %	**State Name**	63.0 %
Sign Name	61.1 %	**Sign Name**	60.8 %
Match Signature	60.9 %	**Match Signature**	61.7 %
Provide Non-Photo ID	59.3 %	**Provide Non-Photo ID**	59.0 %
Provide Photo ID	58.1 %	**Swear Affidavit**	60.1 %
Average Turnout for All States	60.9 %		

Table 2. Predictors of 2004 turnout at the county level taking into account maximum and minimum voter identification requirements

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Intercept	-1.34**	0.14	-1.36**	0.4
Sign Name	-0.01	0.012	0.002	0.02
Match Signature	-0.03*	0.014	-0.001	0.02
Non-photo ID	-0.04**	0.013	-0.01	0.02
Photo Identification	-0.02	0.019	----	----
Affidavit	----	----	-0.01	0.02
Battleground State	0.04**	0.01	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01	0.04*	0.02
Registration Closing Date	-0.002**	0.0005	-0.003**	0.001
% African-American	0.02	0.01	0.02	0.01
% Hispanic	-0.05**	0.01	-0.05**	0.01
% Age 65 or older	0.82**	0.03	0.82**	0.03
Median Household Income	0.18**	0.01	0.18**	0.01
-2 Log Likelihood	-8953.8		-8946.9	

Coefficients are restricted maximum likelihood estimates. N = 3,111. * $p < .05$ ** $p < .01$ (one-tailed tests)

Table 3. Probit model of voter turnout.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.11*	0.05	-0.08*	0.04
Match signature	-0.04	0.05	-0.03	0.05
Non-photo ID	-0.16**	0.06	-0.15**	0.05
Photo ID	-0.17**	0.07	----	----
Affidavit	----	----	-0.23**	0.06
Hispanic	-0.08	0.05	-0.08	0.05
African-American	0.24**	0.04	0.24**	0.04
Asian-American	-0.37**	0.07	-0.38**	0.07
Age 25-44	0.004	0.02	0.003	0.02
Age 45-64	0.26**	0.03	0.26**	0.03
Age65+	0.43**	0.03	0.43**	0.03
High School	0.31**	0.02	0.31**	0.02
Some college	0.57**	0.03	0.57**	0.03
College	0.88**	0.04	0.88**	0.04
Graduate School	0.98**	0.05	0.98**	0.05
Household income	0.03**	0.003	0.03**	0.003
Married	0.23**	0.02	0.23**	0.02
Female	0.10**	0.01	0.10**	0.01
Battleground state	0.17**	0.04	0.18**	0.04
Competitive race	0.05	0.06	0.05	0.05
Employed	0.05	0.05	0.05	0.05
Member of workforce	-0.05	0.05	-0.05	0.05
Native-born citizen	0.02	0.04	0.02	0.04
Moved within past 6 months	-0.29**	0.03	-0.29**	0.03
Constant	-0.09	0.10	-0.09	0.09
Pseudo-R-Squared	0.09		0.10	

Notes: N = 54,973 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 4. Predicted probability of voter turnout – full model

	Maximum requirement	**Minimum requirement**
State name	0.917	0.915
Sign name	0.899	0.902
Match signature	(N.S.)	(N.S.)
Non-photo ID	0.890	0.890
Photo ID	0.888	----
Affidavit	----	0.875
Total difference from "state name" to "photo identification" or "affidavit"	0.029	0.040
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Probit model of turnout for White voters.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.10*	0.05	-0.07	0.04
Match signature	-0.04	0.05	-0.01	0.06
Non-photo ID	-0.14**	0.06	-0.14**	0.06
Photo ID	-0.22**	0.08	----	----
Affidavit	----	----	-0.26**	0.05
Age 25-44	-0.01	0.03	-0.01	0.03
Age 45-64	0.25**	0.03	0.25**	0.03
Age65+	0.44**	0.04	0.44**	0.04
High School	0.36**	0.03	0.36**	0.03
Some college	0.64**	0.03	0.64**	0.03
College	0.95**	0.04	0.96**	0.04
Graduate School	1.05**	0.05	1.05**	0.05
Household income	0.03**	0.004	0.03**	0.003
Married	0.27**	0.02	0.27**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.16**	0.04	0.16**	0.04
Competitive race	0.07	0.07	0.07	0.06
Employed	0.08	0.05	0.08	0.05
Member of workforce	0.0003	0.05	0.003	0.05
Native-born citizen	0.08	0.08	0.08	0.08
Moved within past 6 months	-0.28**	0.03	-0.28**	0.03
Constant	-0.23*	0.11	-0.24**	0.10
Pseudo-R-Squared	.10		.10	

Notes: N = 44,760 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 6. Probit model of turnout for African-American voters.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.13	0.09	-0.08	0.13
Match signature	-0.05	0.10	-0.17	0.13
Non-photo ID	-0.24**	0.07	-0.14	0.12
Photo ID	-0.10	0.12	----	----
Affidavit	----	----	-0.05	0.19
Age 25-44	-0.004	0.09	-0.004	0.09
Age 45-64	0.12	0.09	0.13	0.09
Age65+	0.30**	0.12	0.31**	0.12
High School	0.24**	0.06	0.25**	0.06
Some college	0.40**	0.07	0.40**	0.07
College	0.69**	0.08	0.68**	0.08
Graduate School	0.99**	0.19	0.98**	0.19
Household income	0.04**	0.01	0.05**	0.008
Married	0.11	0.07	0.11	0.07
Female	0.14**	0.04	0.14**	0.04
Battleground state	0.13*	0.07	0.21**	0.08
Competitive race	-0.10	0.07	-0.16	0.10
Employed	-0.09	0.11	-0.09	0.10
Member of workforce	-0.32**	0.12	-0.31**	0.11
Native-born citizen	0.31**	0.11	0.28**	0.12
Moved within past 6 months	-0.32**	0.06	-0.32**	0.06
Constant	0.16	0.18	0.12	0.17
Pseudo-R-Squared	0.09		0.09	

Notes: N = 5,013 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 7. Probit model of turnout for Hispanic voters.

	Maximum Requirements		**Minimum Requirements**	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.20	0.20	-0.19	0.11
Match signature	-0.12	0.20	-0.18	0.12
Non-photo ID	-0.40*	0.20	-0.38**	0.13
Photo ID	-0.13	0.23	----	----
Affidavit	----	----	-0.25	0.16
Age 25-44	0.11	0.09	0.11	0.09
Age 45-64	0.35**	0.10	0.36**	0.10
Age65+	0.38**	0.11	0.40**	0.11
High School	0.18**	0.08	0.19*	0.08
Some college	0.46**	0.07	0.46**	0.07
College	0.63**	0.11	0.64**	0.11
Graduate School	0.72**	0.13	0.73**	0.13
Household income	0.03**	0.01	0.03**	0.01
Married	0.05	0.06	0.05	0.06
Female	0.09*	0.04	0.09*	0.04
Battleground state	0.31**	0.06	0.36**	0.07
Competitive race	-0.06	0.13	-0.05	0.13
Employed	0.13	0.12	0.14	0.12
Member of workforce	0.07	0.13	0.08	0.13
Native-born citizen	-0.18**	0.07	-0.20**	0.07
Moved within past 6 months	-0.38**	0.08	-0.39**	0.08
Constant	0.22	0.27	0.21	0.20
Pseudo-R-Squared	0.08		0.08	

Notes: N = 2,860 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 8. Probit model of turnout for Asian-American voters.

	Maximum Requirements		Minimum Requirements	
Variable	**Unstandardized Estimate**	**Standard Error**	**Unstandardized Estimate**	**Standard Error**
Sign name	-0.37**	0.20	-0.26	0.17
Match signature	-0.17	0.22	-0.01	0.21
Non-photo ID	-0.40**	0.21	-0.28*	0.16
Photo ID	-0.30	0.21	----	----
Affidavit	----	----	0.12	0.30
Age 25-44	-0.11	0.23	-0.10	0.23
Age 45-64	0.06	0.26	0.08	0.26
Age65+	0.14	0.36	0.17	0.34
High School	0.54**	0.21	0.55**	0.21
Some college	0.36	0.31	0.36	0.31
College	0.67**	0.22	0.66**	0.23
Graduate School	0.57*	0.25	0.55*	0.26
Household income	0.01	0.01	0.01	0.01
Married	0.34**	0.13	0.34**	0.13
Female	0.16*	0.09	0.16*	0.08
Battleground state	0.29*	0.14	0.23	0.16
Competitive race	0.33*	0.19	0.27	0.22
Employed	-0.24	0.33	-0.25	0.33
Member of workforce	-0.54	0.35	-0.55	0.35
Native-born citizen	0.14	0.12	0.16	0.11
Moved within past 6 months	-0.38*	0.17	-0.39*	0.17
Constant	0.36	0.52	0.29	0.51
Pseudo-R-Squared	0.08		0.08	

Notes: N = 912 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Appendix

Table A-1. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements treated as a continuous variable.

Variable	Unstandardized Estimate	Standard Error
Intercept	-1.33**	0.14
Voter Identification Requirements	-0.01**	0.004
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01
% African-American	0.02	0.01
% Hispanic	-0.05**	0.01
% Age 65 or older	0.82**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.002**	0.001
-2 Log Likelihood	-8970.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111.
* p < .05 ** p < .01 (one-tailed tests).

Table A-2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements and interactions.		
Variable	**Unstandardized Estimate**	**Standard Error**
Intercept	-1.39**	0.14
Sign Name	-0.02	0.013
Match Signature	-0.03*	0.02
Non-photo ID	-0.05**	0.01
Photo Identification	-0.05**	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01
% African-American	-0.02	0.03
% Hispanic	-0.22**	0.10
% Age 65 or older	0.8**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.002**	0.001
Signature*African-American	0.02	0.04
Match Signature*African-American	0.16**	0.07
Non-photo ID*African-American	0.03	0.03
Photo ID*African-American	0.20**	0.05
Signature*Hispanic	0.14	0.09
Match Signature*Hispanic	-0.01	0.11
Non-photo ID*Hispanic	0.20**	0.09
Photo ID*Hispanic	0.03	0.11
-2 Log Likelihood	-8966.7	
Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (one-tailed tests).		

Table A-3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements and interactions.

Variable	Unstandardized Estimate	Standard Error
Intercept	-1.39**	0.14
Sign Name	0.0003	0.016
Match Signature	-0.001	0.02
Non-photo ID	-0.02	0.02
Affidavit	-0.02	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.02
% African-American	-0.02	0.02
% Hispanic	-0.19**	0.08
% Age 65 or older	0.82**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.003**	0.001
Signature*African-American	-0.007	0.03
Match Signature*African-American	0.15**	0.05
Non-photo ID*African-American	0.04	0.03
Affidavit*African-American	0.18**	0.05
Signature*Hispanic	0.12	0.08
Match Signature*Hispanic	-0.03	0.11
Non-photo ID*Hispanic	0.17*	0.08
Affidavit*Hispanic	-0.04	0.10
-2 Log Likelihood	-8960.8	

Coefficients are restricted maximum likelihood estimates. N = 3,111.
* p < .05 ** p < .01 (one-tailed tests).

Table A-4. Probit model of voter turnout treating maximum voter identification requirements as a continuous variable.

Variable	Unstandardized Estimate	Standard Error
Voter Identification Requirements	-0.04**	0.02
Hispanic	-0.09	0.05
African-American	0.24**	0.04
Asian-American	-0.38**	0.07
Age 25-44	0.005	0.02
Age 45-64	0.26**	0.03
Age65+	0.43**	0.03
High School	0.31**	0.02
Some college	0.57**	0.03
College	0.87**	0.04
Graduate School	0.98**	0.05
Household income	0.03**	0.003
Married	0.23**	0.02
Female	0.10**	0.01
Battleground state	0.19**	0.04
Competitive race	0.04	0.05
Employed	0.05	0.05
Member of workforce	-0.05	0.05
Native-born citizen	0.02	0.04
Moved within past 6 months	-0.29**	0.03
Constant	-0.08	0.10
Pseudo-R-Squared	0.09	

Notes: N = 54,973 registered voters

p < .05* p < .01** (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

APPENDIX D

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
    - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico,* 3 ELECTION L.J. 513 (2004).
    - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico,* 3 ELECTION L.J. 584 (2004).
    - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act,* 40 HARV. J. ON LEGIS. 579 (Summer 2003).
    - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
    - Discusses changes in AL to their election law in 2003, including adding voter ID
    - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania,* 41 Duq. L. Rev. 153 (Fall, 2002).
    - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election,* 18 GA. ST. U. L. REV. 114 (Fall 2001).
    - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests,* 28 Tex. Tech L. Rev. 1095 (1997).
    - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. DET. MERCY L. REV. 291 (Winter 1997).
    - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
    - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote,* 96 YALE L.J. 1615 (1987).
    - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act,* 31 FORDHAM URB. L.J. 235 (November 2003).
    - Lot of analysis on HAVA and voter ID
    - Little bit of historical
    - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
    - History of voting & requirements & laws throughout time
    - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
    - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
    - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
    - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
    - Voter ID and Internet voting
    - Costs & Benefits of Internet voting
    - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
    - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
    - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
    - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
    - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
    - History of voting and requirements
    - Theory

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age.* Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory.* Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice.* 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics,* 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics.* 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review.* 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly.* 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001).

------- "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice.* 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review.* 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy.* 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Avaliable online at ????????.

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics.* 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections.* Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective.* Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union.* Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies.* 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science.* 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior.* 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography.* 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies.* 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout.* Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research.* 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects.* Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

------- "Easy Registration and Voter Turnout." *Journal of Politics.* 59:2 (May 1997).

------- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000).

------- "Voter Registration and Turnout in the United States." *Perspectives on Politics.* 2:3 (September 2004).

------- "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly.* Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research.* 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998).

------- "The Political Implications of Higher Turnout." *British Journal of Political Science.* 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly.* 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies.* 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality.* Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at http://209.235.207.197/imgtest/taskforcereport.pdf

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal.* 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research.* 29:2 (March 2001).

------- "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior.* 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

------- *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation.* Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980.* New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.* 57:3 (August 1995).

------- "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice.* 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review, 3:1 (February 1909).*

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics.* 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review.* 84:2 (June 1990).

------- "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review.* 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly.* 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology.* 103:5 (March 1998).

------- "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology.* 103:1 (July 1997).

------- "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review.* 62:6 (December 1997).

------- *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions.* New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science.* 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies.* 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report.* 2004. Available online at http://www.brookings.edu/views/papers/20040909mcdonald.pdf

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review.* 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice.* 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior.* 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government.* New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics.* 29:3 (September 1996).

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at http://elections.ssrc.org/research/InterimReport122204.pdf

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals.* 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science.* 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science.* 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review.* 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly.* 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter.* New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote.* New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy.* Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review.* 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review.* 80:1 (March 1986).

------- *Contemporary Democracies: Participation, Stability, and Violence.* Cambridge, MA: Harvard University Press, 1982.

------- "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics.* 1:2 (April 1989).

------- "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis.* Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies.* 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America.* New York, NY: Macmillan, 1993.

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review.* 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science.* 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly.* 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly.* 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly.* 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review.* 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice.* 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly.* 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison.* Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine.* September 1998. Available online at http://www.democ.uci.edu/papers/marty.html

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces,* 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller.* Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review.* 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

Appendix E

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

FINAL DRAFT
For Review by the Standards Board and Board of Advisors

Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Voter Identification Requirements
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252

May 16, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891.It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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Peer Review Group

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

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REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

- Opponents seek to forestall more stringent identification requirements, such as for government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate and investigates whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout, and important first step in assessing tradeoffs between ballot security and ballot access. The aim is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis was conducted to examine the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:[1] the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also consides some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.[2] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, although it used different statistical methods and two different sets of data on turnout in 2004 election, it points to the same general finding. As discussed at greater length in the appendix to this report, stricter voter identification requirements were correlated with reduced turnout in the models employed.[3] As explained below, these models find that a statistically significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible

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[1] See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

[2] The EAC has contracted with other researchers to study vote fraud issues.

[3] Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout.*

voters, however, the tradeoffs between ballot security and ballot access cannot be assessed fully.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.[4] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding that the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

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[4] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names. With the addition of the registration closing data to the aggregate analysis, photo id is no longer a

significant predictor of turnout. Signature match and non-photo id remain significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

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The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for

example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[5] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls

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[5] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
    I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors:

the convenience of the voter, the total time allowed to evaluate ballots[6], and the safe harbor provision in presidential elections.

5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more uncertain.

SUMMARY OF RESEARCH

Background and Approach of the Study

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether the vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the

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[6] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.

- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with <u>medium levels of income</u> and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics.* 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in <u>lower</u> socio-economic status.

- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior.* 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.
- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.

- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.*, 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related. [7] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[8]

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[7] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

[8] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[9] Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter

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[9] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[10] Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.[11] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards –legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[12]

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[10] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[11] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

[12] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[13]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[14]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[15] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.
5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[16]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it,

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[13] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[14] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[15] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

[16] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

Voter ID and Turnout

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004.These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[17] Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.[18]

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum

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[17] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

[18] As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.[19] Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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[19] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

TABLE 1 – Voter ID Requirements[20]

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

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[20] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements (r = -.30, p < .05). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant (r= -.20, p = .16). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.2 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.4 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.[21]

Voter identification requirements are just one factor that may affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American [22]
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

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[21] The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

[22] The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that voter identification requirements such as signature matching, a non-photo ID or a photo ID are associated with lower turnout than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election. [23]

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum

---

[23] This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

requirements, a signature match, non-photo identification or photo identification were correlated with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.[24] Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[25] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens; the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey. In addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have

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[24] For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[24] Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

[25] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

influenced turnout in 2004.[26] The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[27]

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.[28] Table 3 below shows predicted probabilities (calculated from the probit coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.[29] .

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[26] The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

[27] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[28] A probit model is a popular specification of a generalized linear regression model, using the probit link function.

[29] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

Table 3. Predicted probability of voter turnout – all voters		
	Maximum requirement	**Minimum requirement**
State name	91.7%	91.5%
Sign name	89.9%	90.2%
Match signature	Not significant	Not significant
Non-photo ID	89.0%	89.0%
Photo ID	88.8%	---
Affidavit	---	87.%5
Total difference from "state name" to "photo ID" or "affidavit"	**2.9%**	**4.0%**
N	54,973	
Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model. Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.		

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[30] In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

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[30] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.[31] The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

Varying voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

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[31] Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

In the aggregate data, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names.

The signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names. That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*).. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is <u>not</u> the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.[32] Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups,* Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL

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[32] Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at

the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased. [33]

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents

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[33] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

Karen Lynn-Dyson/EAC/GOV
05/17/2006 12:29 PM

To "Tom O'neill" <[redacted]L
cc Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
bcc
Subject Re:Presentations at the EAC Governing Boards

Tom-

Look forward to getting a PDF copy of the final versions of the Voter ID paper and the Provisional Voting Paper by COB today

Here is the timing breakdown for next week's presentations:

EAC Standards Board (137 members)

Tuesday, May 23, 2006
2:30-4:00 PM
Hamilton Ballroom
Provisional Voting
45 minutes for presentation
45 minutes for questions and answers

Wednesday, May 24, 2006
1:40-2:45 PM
Hamilton Ballroom
Voter Identification
40 minutes for presentation
25 minutes for questions and answers

EAC Board of Advisors (36 members)

Wednesday, May 24, 2006
8:30-9:15 AM
Lafayette Park Ballroom
Provisional Voting
20 minutes for presentation
25 minutes questions and answers

Wednesday, May 24, 2006
11:00-11:55 PM
Lafayette Ballroom
Voter Identification
30 minutes presentation
25 minutes questions and answers

EAC General Counsel Julie Thompson- Hodgkins will facilitate/moderate all of your sessions

Will be in touch tomorrow after the Commissioners have met.

Karen Lynn-Dyson

Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/17/2006 05:17 PM

To "Tom O'neill" [redacted]
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC
bcc
Subject RE: Presentations at the EAC Governing Boards

I am told that a Wordperfect copy of the Provisional document will be fine.

EAC staff will convert it to a PDF file. Please sent the final drafts of the reports ASAP.

Also, you are correct to note the changes in the time allotments Please divide the time among your staff as you deem appropriate.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

"Tom O'neill"
[redacted]
05/17/2006 04:57 PM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, john.weingart@rutgers.edu, foley.33@osu.edu
Subject RE: Presentations at the EAC Governing Boards

Karen, I don't have the capacity to produce a PDF copy of the report. (I thought we discussed this last week and you agreed that the word document would suffice.) Someone at Eagleton could surely covert the DOC file to PDF, but since I just read your email now (4:50), we could not provide a PDF copy today. Please let me know if you want me to pursue this tomorrow.

Thanks for the schedule below. But it raises a question. Earlier this week you told me that the Commissioners asked that we limit our presentation to 10 minutes and leave the rest of the time for questions and comments. As I noted in my response, condensing our reports to 10 minutes poses a challenge. Is the 10 minute limit no longer operative?

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, May 17, 2006 12:30 PM
To: [redacted]
Cc: asherrill@eac.gov; aambrogi@eac.gov; jthompsonhodgkins@eac.gov
Subject: Re:Presentations at the EAC Governing Boards

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1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/18/2006 08:43 AM

To "Tom O'neill" [redacted]
cc
bcc
Subject RE: Presentations at the EAC Governing Boards

I believe we're all set. Adam Ambrogi or Amie Sherill will be in touch, if not.

k
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
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Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <tom_oneill@verizon.net>

"Tom O'neill"
[redacted]
05/17/2006 08:53 PM

To klynndyson@eac.gov
cc
Subject RE: Presentations at the EAC Governing Boards

Karen, I'm afraid I don't have WordPerfect either. And Rutgers runs on MS Word as well. But I'll see what we can do..

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, May 17, 2006 5:17 PM
To: [redacted]
Cc: aambrogi@eac.gov; asherrill@eac.gov
Subject: RE: Presentations at the EAC Governing Boards

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Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

05/17/2006 04:57 PM

To klynndyson@eac.gov

cc tokaji.1@osu.edu, john.weingart@rutgers.edu, foley.33@osu.edu

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Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, May 17, 2006 12:30 PM
To: [redacted]
Cc: asherrill@eac.gov; aambrogi@eac.gov; jthompsonhodgkins@eac.gov
Subject: Re:Presentations at the EAC Governing Boards

Tom-

Look forward to getting a PDF copy of the final versions of the Voter ID paper and the Provisional Voting Paper by COB today

Here is the timing breakdown for next week's presentations:

EAC Standards Board (137 members)

Tuesday, May 23, 2006
2:30-4:00 PM
Hamilton Ballroom
Provisional Voting
45 minutes for presentation
45 minutes for questions and answers

Wednesday, May 24, 2006
1:40-2:45 PM
Hamilton Ballroom
Voter Identification
40 minutes for presentation
25 minutes for questions and answers

EAC Board of Advisors (36 members)

Wednesday, May 24, 2006
8:30-9:15 AM
Lafayette Park Ballroom
Provisional Voting
20 minutes for presentation
25 minutes questions and answers

Wednesday, May 24, 2006
11:00-11:55 PM
Lafayette Ballroom
Voter Identification
30 minutes presentation
25 minutes questions and answers

EAC General Counsel Julie Thompson- Hodgkins will facilitate/moderate all of your sessions

Will be in touch tomorrow after the Commissioners have met.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
05/18/2006 12:43 PM

To "Tom O'neill" [redacted]
cc arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu, ireed@rutgers.edu, "'Johanna Dobrich'"
bcc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC; twilkey@eac.gov; Adam Ambrogi/EAC/GOV@EAC; Amie J. Sherrill/EAC/GOV@EAC
Subject Re: Voter ID Report and Appendices

Tom-

As was just discussed, the EAC's Commissioners have elected to delay a presentation of Eagleton's report on Voter Identification to the EAC Board of Advisors and Standards Board, at this time.

The Commissioners will spend time over the next several weeks reviewing and considering this report in great detail and will make a determination, shortly thereafter, regarding how they wish to proceed with the issuance of an EAC report on this study.

Many thanks to you and your staff for the work that has been done. We look forward to next week's presentation of the Eagleton/Moritz study of provisional voting.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" [redacted]

"Tom O'neill"
[redacted]
05/17/2006 09:25 AM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com, "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>
Subject Voter ID Report and Appendices

Karen,

Attached for review by the Commissioners is the Voter ID Report and its appendices. The appendices are lengthy, but I believe Appendix A should be included in the report sent to the Advisory Boards for review.

Thanks for your forbearance.

Tom O'Neill

Appendices517.doc VoterIDReport05170910.doc

Karen Lynn-Dyson/EAC/GOV
06/02/2006 09:26 AM

To "Thomas O'Neill" [redacted]
cc twilkey@eac.gov
bcc
Subject Re: Next steps

Tom-

Indeed, the Commissioners were to review next steps with the Voter Identification research paper and next steps with the Provisional Voting report during yesterday's meeting.

As you are aware, your Provisional Voting report stimulated a great deal of discussion at last week's Standard Board and Board of Advisors meetings. Given this fact and the various political exigencies which surround the topic of voter identification, the Commissioners wish to take more time to consider thoroughly and carefully, how they wish to proceed with the delivery of an EAC research report on provisional voting and voter identification.

I will let you know in the next week to ten days, the outcome of the Commissioner's discussion on how they wish to proceed with Eagleton's studies on these topics.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Thomas O'Neill" [redacted]

"Thomas O'Neill"
[redacted]
06/01/2006 03:55 PM

To klynndyson@eac.gov
cc
Subject Next steps

Karen,

While we were in Washington for the meetings of the advisory boards, you told me the Commissioners were to meet today, June 1, and would reconsider the Voter ID paper. As you can, no doubt, imagine, we are all interested in learning the outcome of that discussion.

We also look forward to your guidance concerning the next steps to complete the work on the Provisional Voting report that we presented to the advisory boards last week.

Karen Lynn-Dyson/EAC/GOV
06/08/2006 11:24 AM

To john.weingart@rutgers.edu
cc "Tom O'Neill" [redacted]
bcc
Subject Re: Letter to Commissioner DeGregorio

John-

Thanks ever so much for sharing this letter.

Either the Chairman, Tom Wilkey or myself will be in touch with a response very shortly.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>

"John Weingart"
<john.weingart@rutgers.edu>
06/08/2006 10:31 AM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Tom O'Neill" [redacted]
Subject Letter to Commissioner DeGregorio

Karen - I am attaching a copy of a letter we are just faxing and mailing to Commissioner DeGregorio. Thanks, John

--
-- John Weingart, Associate Director
   Eagleton Institute of Politics
   (732)932-9384, x.290

DeGregorioFinal.060806.doc

Deliberative Process Privilege

EAGLETON INSTITUTE OF POLITICS

Paul S. DeGregorio
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
Fax: (202) 566-3127

June 8, 2006

Dear Chairman DeGregorio:

Karen Lynn-Dyson relayed the Commission's decision in your meeting of June 1 to take more time to consider how to proceed with the delivery of EAC research reports on provisional voting and voter identification.

The Eagleton-Moritz research team, of course, encourages the Commission's thoughtful consideration of the two reports, but we are mindful of the need to deliver revised documents that respond to the Commission's comments by the close of our contract on June 30th. We believe that if we receive the Commission's final comments on the Provisional Voting report by June 19 we will be able to complete any additional work that the Commission might request and incorporate the results in our final reports before the end of the contract period.

Based on suggestions raised at the meetings, we already plan to supplement the Provisional Voting report with some brief, additional information about the influence of the fail-safe ballot provisions of the National Voting Rights Act on the experience with provisional voting in 2004.

We understand that the Commission must submit the final draft Voter ID report to the same review process by your advisory boards as was followed with the Provisional Voting paper. We understand that step is a prerequisite for wider release. We would appreciate your advice on how to handle this review, given the rapidly approaching end of our contract.

We hope the commission will use both reports, as intended from the outset of this project, as the basis for recommendations for better, if not best, practices to the states. If the Commission cannot decide to issue such recommendations to the states, we hope it will promptly release the reports to provide the states and the broader elections community with this information, analysis and perspective on the issues.

We recognize, based on the reactions at the meetings of the Standards Board and, particularly, the Board of Advisors, that some of the findings, conclusions, and recommendations of the reports will be controversial with some of the Commission's constituencies. But we also believe, based on the comments of the Peer Review Group, the advisors assembled by the Commission, and our response to their critiques, that the reports are grounded on solid research by a well-qualified, nonpartisan team and that the reports will provide new information for the policy process. We believe this information will contribute to achieving the EAC mission of providing helpful information that the states may or may not choose to implement.

191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557

Tel: (732) 932-9384
Fax: (732) 932-6778

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

E-mail: eagleton@rci.rutgers.edu
Web: www.eagleton.rutgers.edu

The information in the reports can improve the policy process by raising the level of debate over increasingly volatile issues related to election administration. We believe our reports will prove useful to the states as they complete preparations for the 2006 elections. Moreover, the elections community is aware of this work, and awaits the analysis and conclusions.

We look forward to working with you to conclude this research in a way that will serve the public interest.

Very truly yours,

Thomas M. O'Neill
Project Director

Karen Lynn-Dyson/EAC/GOV
06/16/2006 09:32 AM

To "Thomas O'Neill" [redacted]
cc
bcc twilkey@eac.gov
Subject Re: Prov Voting and Voter ID Reports

Tom-

On Tuesday I drafted a letter for the Executive Director's signature.
He should be in touch today or Monday at the latest.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Thomas O'Neill" [redacted]

"Thomas O'Neill" [redacted]
06/16/2006 08:49 AM

To klynndyson@eac.gov
cc
Subject Prov Voting and Voter ID Reports

Karen,

Could you please give me your reading of the status of a response to our letter last week that raised some issues for resolution by the Commission on the completion of our work during the final few weeks of the contract period. The Team needs to know how to proceed during the remaining 2 weeks of the project.

Thanks,

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV

06/26/2006 04:34 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC

cc twilkey@eac.gov, Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Close-out with Eagleton

In anticipation of the conclusion of the Eagleton contract ,Darrell and I are going over contract items which may be outstanding (monthly reports, key deliverables, invoices, etc).

You may recall that the contract called for guidance to be issued on provisional voting and voter identification and for a public hearing to be held on each of these topics.

We possess e-mails and written correspondence which document that EAC elected not to issue guidance or to conduct public hearings on these matters.

In your opinion, is such correspondence sufficient documentation that the contractor was not required to deliver these deliverables?

Thanks for your guidance.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
06/27/2006 09:10 AM

To Gavin S. Gilmour/EAC/GOV@EAC
cc Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: Close-out with Eagleton

No and no.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV
06/26/2006 05:06 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc Thomas R. Wilkey/EAC/GOV, Darrell D. Lee/CONTRACTOR/EAC/GOV
Subject Re: Close-out with Eagleton

Has the conractor deliverd such items? Or, more specifically, has the contractor submitted invoices for work done on these deliverables?

Gg

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 06/26/2006 04:34 PM
To: Juliet Thompson-Hodgkins; Gavin Gilmour
Cc: Thomas Wilkey; Darrell Lee
Subject: Close-out with Eagleton

In anticipation of the conclusion of the Eagleton contract ,Darrell and I are going over contract items which may be outstanding (monthly reports, key deliverables, invoices, etc).

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Thanks for your guidance.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
06/27/2006 12:13 PM

To Gavin S. Gilmour/EAC/GOV@EAC
cc Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: Close-out with Eagleton

Is T for C termination for convenience?

If so, I should then be drafting a letter similar to the one which was drafted for Design for Democracy and signed by Tom in which EAC discusses the fact that the agency is no longer requiring the contractor to perform services in its contract related to the re-design of the NVRA form?

Thanks

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV
06/27/2006 11:23 AM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: Close-out with Eagleton

did they ever receive a TforC letter from the contracting officer. If not this should be done... I believe you can find the process and info in your COTR book.

GG

Gavin S. Gilmour
Deputy General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
06/27/2006 09:10 AM

To Gavin S. Gilmour/EAC/GOV@EAC

cc Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: Close-out with Eagleton

No and no.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV
06/26/2006 05:06 PM
To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV
cc Thomas R. Wilkey/EAC/GOV, Darrell D. Lee/CONTRACTOR/EAC/GOV
Subject Re: Close-out with Eagleton

Has the conractor deliverd such items? Or, more specifically, has the contractor submitted invoices for work done on these deliverables?

Gg

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 06/26/2006 04:34 PM
To: Juliet Thompson-Hodgkins; Gavin Gilmour
Cc: Thomas Wilkey; Darrell Lee
Subject: Close-out with Eagleton

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We possess e-mails and written correspondence which document that EAC elected not to issue guidance or to conduct public hearings on these matters.

In your opinion, is such correspondence sufficient documentation that the contractor was not required to deliver these deliverables?

Thanks for your guidance.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

06/27/2006 05:20 PM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC

cc

bcc

Subject Fw: Eagleton Institute of Politics - July 2005 - Monthly Progress Report

I think you have this- it may be a duplication. Please check.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/27/2006 05:18 PM -----

"Lauren Vincelli" <Vincelli@rutgers.edu>

08/15/2005 03:01 PM

Please respond to Vincelli@rutgers.edu

To klynndyson@eac.gov

cc "'Tom O'neill'" [redacted] rmandel@rci.rutgers.edu, john.weingart@rutgers.edu

Subject Eagleton Institute of Politics - July 2005 - Monthly Progress Report

Ms. Dyson,

Attached please find the July 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please contact Tom O'Neill at: [redacted]

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,
Lauren Vincelli

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551

ProgressReport_JULY2005_EagletonInst.pdf

Karen Lynn-Dyson/EAC/GOV

06/27/2006 05:17 PM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: March Progress Report

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/27/2006 05:16 PM -----

"Tom O'neill"
[redacted]
04/14/2006 12:50 PM

To klynndyson@eac.gov
cc [redacted] john.weingart@rutgers.edu
Subject March Progress Report

Karen,

Attached is the Progress Report for March. I think our conversation earlier this week laid out a clear path to a successful conclusion of the project.

Tom O'Neill

Progress ReportMarch06.doc

Karen Lynn-Dyson/EAC/GOV

06/27/2006 05:21 PM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: Eagleton's September Progress Report

May be another dup. Please check.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/27/2006 05:19 PM -----

jdobrich@eden.rutgers.edu
10/17/2005 03:14 PM

To klynndyson@eac.gov
cc
Subject Eagleton's September Progress Report

Dear Ms. Karen Lynn Dyson:

My name is Johanna Dobrich and I have taken over the responsibility of sending the Eagleton Institute of Politics Monthly Progress Reports to you, in place of Lauren Vincelli.

Attached in this email you will find the Eagleton Institute of Politics monthly Progress Report for September 2005. Also attached, is a document called "PRG Summary Comments" which is an attachment to September's Progress Report.

Please email me at jdobrich@eden.rutgers.edu to confirm that you have received this email. If you prefer I send a hard copy of these documents, in addition to the electronic version, please let me know.

Sincerely,

Johanna Dobrich

ProgressReport_SEPTEMBER2005_EagletonInstitute.doc PRG Summary Comments 10.17.05.doc

Karen Lynn-Dyson/EAC/GOV

06/27/2006 05:24 PM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC

cc

bcc

Subject Fw: November's Progress Report

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/27/2006 05:22 PM -----

"Johanna Dobrich"
<jdobrich@eden.rutgers.edu>

12/13/2005 12:29 PM

To klynndyson@eac.gov

cc "tim.vercellotti@rutgers.edu" <tim.vercellotti@rutgers.edu>, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, tokaji.1@osu.edu, foley.33@osu.edu, [redacted]

Subject November's Progress Report

Dear Ms. Karen Lynn-Dyson:

Attached please find the Eagleton/Moritz Progress Report for the month of November.

Please direct any questions about this report to Tom O'Neill (tom_oneill@verizon.net).

Sincerely,

Johanna Dobrich

--

Johanna Dobrich
jdobrich@eden.rutgers.edu

ProgressReport_ NOVEMBER 2005_ Eagleton Institute of Politics.doc

Karen Lynn-Dyson/EAC/GOV
06/28/2006 09:50 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: Eagleton Institute of Politics - July 2005 - Monthly Progress Report

April and May don't exist. We won't have a June report until mid-July.

Am sending you all of the necessary Eagleton e-mails starting now.

It will be a deluge (at least 50-75).

Sorry

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

06/28/2006 10:06 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: Tally vote document on Eagleton Institute

You don't necessarily need this e-mail document, but you should get the formal tally vote record from DeAnna

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:04 AM -----

Juliet E. Thompson/EAC/GOV

04/20/2005 06:07 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: Tally vote document on Eagleton Institute

I've taken a brief look at this. Seems pretty straightforward. However, you might want to talk to Carol about the level of detail (not a whole lot in the memo re other bidders)-- maybe it's not needed. Once you've settled on a final, work with DeAnna to get the other docs necessary for a tally vote.

Juliet E. Thompson
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

04/20/2005 05:34 PM

To Carol A. Paquette/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC
cc Raymundo Martinez/EAC/GOV@EAC
Subject Tally vote document on Eagleton Institute

Carol and Julie-

Here is the draft of the tally vote document on Eagleton.

I'm not at all certain that I have done this correctly, having never done one before.

Karen Lynn-Dyson/EAC/GOV

06/28/2006 10:04 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: Please send me the latest electronic version of the SOW on the VoterID and Provisional Voting project

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:02 AM -----

Carol A. Paquette/EAC/GOV

02/17/2005 02:50 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: Please send me the latest electronic version of the SOW on the VoterID and Provisional Voting project

See attached.

STatement of Work - Provisional Voting.Voter ID.doc

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

02/17/2005 02:12 PM

To Carol A. Paquette/EAC/GOV@EAC
cc
Subject Please send me the latest electronic version of the SOW on the VoterID and Provisional Voting project

Thanks. I need this by COB today, if at all possible.

Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Also,Carol will have to fill in the contract amount.

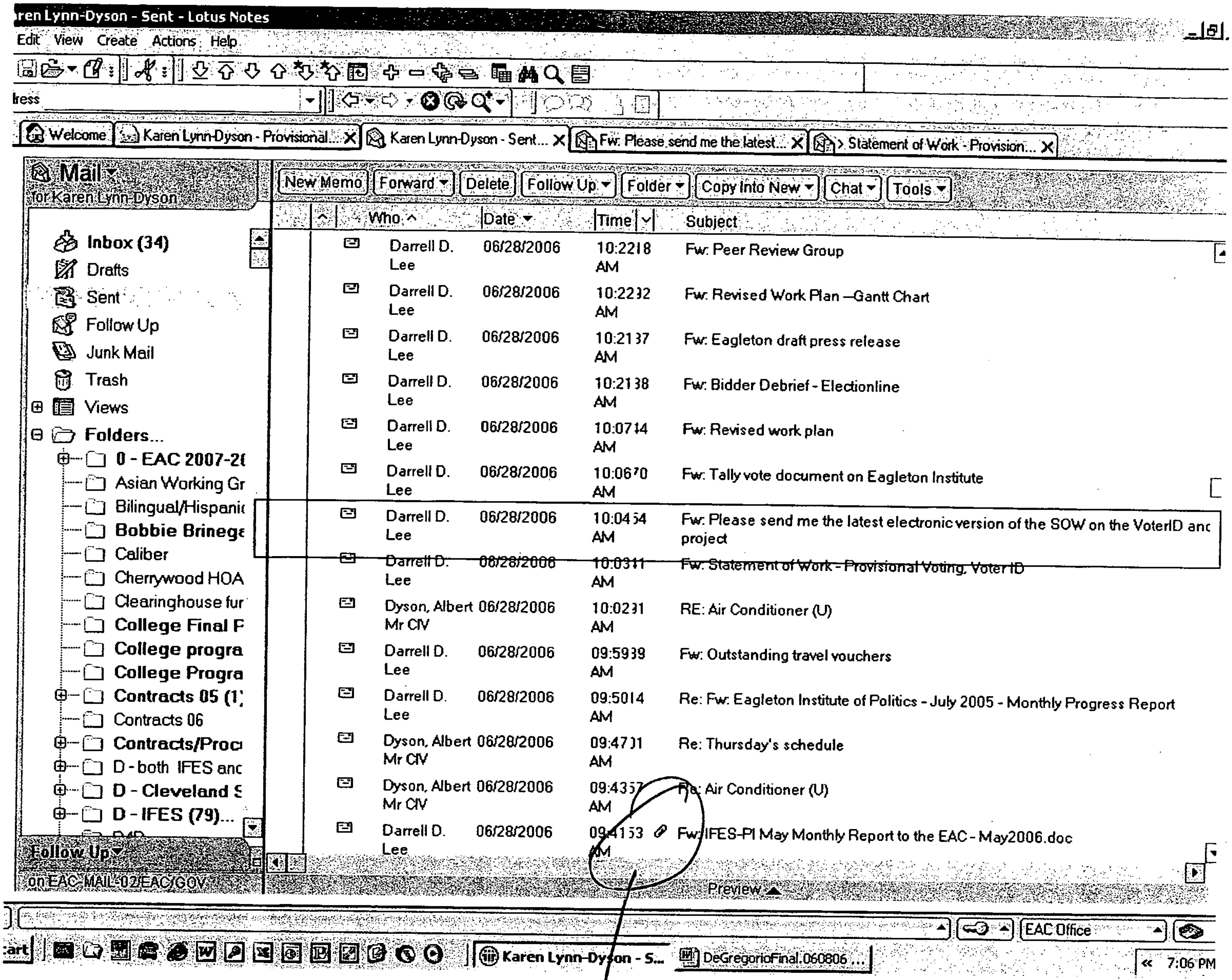
K

Tally Vote- Eagleton Institute contract.doc

Karen Lynn-Dyson
Director, Help America Vote College Program
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Deliberative Process
Privilege

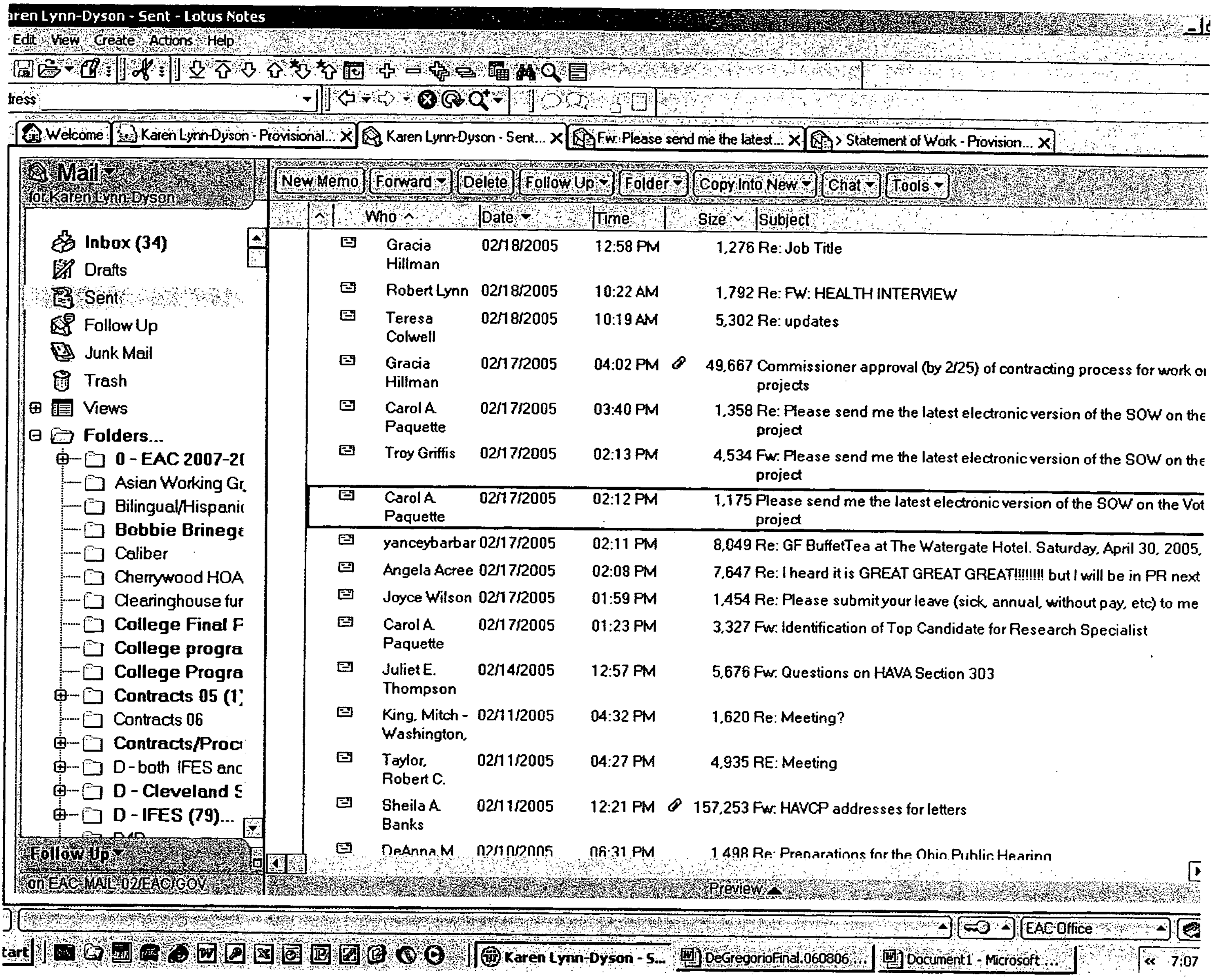
The email message shows a picture image of a file – NO file is attached



Who	Date	Time	Subject
Darrell D. Lee	06/28/2006	10:2218 AM	Fw: Peer Review Group
Darrell D. Lee	06/28/2006	10:2232 AM	Fw: Revised Work Plan —Gantt Chart
Darrell D. Lee	06/28/2006	10:2137 AM	Fw: Eagleton draft press release
Darrell D. Lee	06/28/2006	10:2138 AM	Fw: Bidder Debrief - Electionline
Darrell D. Lee	06/28/2006	10:0714 AM	Fw: Revised work plan
Darrell D. Lee	06/28/2006	10:0670 AM	Fw: Tally vote document on Eagleton Institute
Darrell D. Lee	06/28/2006	10:0454 AM	Fw: Please send me the latest electronic version of the SOW on the VoterID anc project
Darrell D. Lee	06/28/2006	10:0311 AM	Fw: Statement of Work - Provisional Voting, Voter ID
Dyson, Albert Mr CIV	06/28/2006	10:0231 AM	RE: Air Conditioner (U)
Darrell D. Lee	06/28/2006	09:5939 AM	Fw: Outstanding travel vouchers
Darrell D. Lee	06/28/2006	09:5014 AM	Re: Fw: Eagleton Institute of Politics - July 2005 - Monthly Progress Report
Dyson, Albert Mr CIV	06/28/2006	09:4731 AM	Re: Thursday's schedule
Dyson, Albert Mr CIV	06/28/2006	09:4357 AM	Re: Air Conditioner (U)
Darrell D. Lee	06/28/2006	09:4153 AM	Fw: IFES-PI May Monthly Report to the EAC - May2006.doc

AN EXAMPLE OF A MESSAGE w/ AN ATTACHMENT, THE 10:04 AM MESSAGE HAS NO ATTACHMENT, ONLY A IMAGE OF ONE. THERE ARE SOLUTIONS,

The email message shows a picture image of a file – NO file is attached



Who	Date	Time	Size	Subject
Gracia Hillman	02/18/2005	12:58 PM	1,276	Re: Job Title
Robert Lynn	02/18/2005	10:22 AM	1,792	Re: FW: HEALTH INTERVIEW
Teresa Colwell	02/18/2005	10:19 AM	5,302	Re: updates
Gracia Hillman	02/17/2005	04:02 PM	49,667	Commissioner approval (by 2/25) of contracting process for work o projects
Carol A. Paquette	02/17/2005	03:40 PM	1,358	Re: Please send me the latest electronic version of the SOW on the project
Troy Griffis	02/17/2005	02:13 PM	4,534	Fw: Please send me the latest electronic version of the SOW on the project
Carol A. Paquette	02/17/2005	02:12 PM	1,175	Please send me the latest electronic version of the SOW on the Vot project
yanceybarbar	02/17/2005	02:11 PM	8,049	Re: GF BuffetTea at The Watergate Hotel. Saturday, April 30, 2005,
Angela Acree	02/17/2005	02:08 PM	7,647	Re: I heard it is GREAT GREAT GREAT!!!!!!!! but I will be in PR next
Joyce Wilson	02/17/2005	01:59 PM	1,454	Re: Please submit your leave (sick, annual, without pay, etc) to me
Carol A. Paquette	02/17/2005	01:23 PM	3,327	Fw: Identification of Top Candidate for Research Specialist
Juliet E. Thompson	02/14/2005	12:57 PM	5,676	Fw: Questions on HAVA Section 303
King, Mitch - Washington,	02/11/2005	04:32 PM	1,620	Re: Meeting?
Taylor, Robert C.	02/11/2005	04:27 PM	4,935	RE: Meeting
Sheila A. Banks	02/11/2005	12:21 PM	157,253	Fw: HAVCP addresses for letters
DeAnna M	02/10/2005	06:31 PM	1,498	Re: Preparations for the Ohio Public Hearing

Karen Lynn-Dyson/EAC/GOV

06/28/2006 10:03 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: Statement of Work - Provisional Voting, Voter ID

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:01 AM -----

Carol A. Paquette/EAC/GOV

01/30/2005 06:21 PM

To johnwein@rci.rutgers.edu;ireed@rci.rutgers.edu;baruch@rci.rutgers.edu;pnjton@aol.com
cc rmandel@rci.rutgers.edu
Subject Statement of Work - Provisional Voting, Voter ID

John et al. -

Here's a revised SOW for this work. I apologize for the formatting; I'm not the greatest at word processing and couldn't figure out how to undo the Microsoft automatic formatting that kicked in part way through the document. But thought it more important to get you the content and have someone make it pretty later. As indicated earlier, the government cost estimate is preliminary; we're open to discussion with appropriate rationale for another figure. Looking forward to working with you!

STatement of Work - Provisional Voting.Voter ID.doc

Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV

06/28/2006 10:21 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV@EAC
cc
bcc
Subject Fw: Eagleton draft press release

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:20 AM -----

Gracia Hillman/EAC/GOV

06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV
cc Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV, Juliet E. Thompson/EAC/GOV, "Tom Wilkey" <twilkey@nycap.rr.com>
Subject Re: Eagleton draft press release

I have some concerns about the press release. In paragraph two, I am not comfortable with the following language in what I believe is paragraph two: Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006.

It seems to me that EAC will develop the guidance based on Eagleton's findings.

Also, I do not think the press release should contain the list of questions. Are they/we trying to float a trial balloon and elicit initial reaction at this early stage of the study??

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Jeannie Layson
Sent: 06/10/2005 12:57 PM
To: Gracia Hillman; Raymundo Martinez; Paul DeGregorio
Cc: Karen Lynn-Dyson; Carol Paquette; Juliet Thompson
Subject: Eagleton draft press release

Commissioners,
Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

Deliberative Process Privilege

DRAFT FOR APPROVAL

EAGLETON INSTITUTE OF POLITICS WINS $560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION

Rutgers Institute to Study Provisional Voting, Voter Identification Procedures

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a $560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security. Questions include:

- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?

- Did local procedures reflect the state's uniform procedures?
- Did all states and election jurisdictions make these procedures available to the public, political parties and candidates before the election?

- To what extent were poll workers appropriately trained on how to administer provisional ballots, including establishing the identity of the potential voter seeking a provisional ballot?

- How were federal funds under the Help America Vote Act used to educate voters about their rights to cast a provisional ballot and where such provisional ballots must be cast to be counted?

- In states where a provisional ballot had to be cast at the voter's assigned polling place or precinct, was information available to poll workers to allow them to determine the voter's assigned precinct and polling place?

- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of alternatives to existing practices and procedures.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:53 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Notification to Bidders

Electionline.org unsuccessful bidder de-brief.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:51 AM -----

"Doug Chapin"
<dchapin@electionline.org>
06/06/2005 07:56 AM

To nmortellito@eac.gov
cc cpaquette@eac.gov, klynndyson@eac.gov
Subject RE: Notification to Bidders

Let's do the afternoon of June 16th. I'll pencil it in for 2pm but feel free to adjust to your schedule(s).

Thanks.

Doug Chapin

From: nmortellito@eac.gov [mailto:nmortellito@eac.gov]
Sent: Friday, June 03, 2005 4:52 PM
To: Doug Chapin
Cc: cpaquette@eac.gov; klynndyson@eac.gov
Subject: RE: Notification to Bidders

Mr Chapin:

Carol has time to do a debrief with you on the afternoon of the 15th, the afternoon of the 16th or any time on the 17th of June. Please advise as to your availability.

Regards,

Nicole K. Mortellito
Assistant to the Interim Executive Director
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.3114 phone

202.566.3127 fax

"Doug Chapin" <dchapin@electionline.org>

06/03/2005 02:21 PM

To cpaquette@eac.gov
cc nmortellito@eac.gov
Subject RE: Notification to Bidders

I would like a debrief on this procurement.

Doug Chapin
Director, electionline.org

From: nmortellito@eac.gov [mailto:nmortellito@eac.gov]
Sent: Friday, June 03, 2005 2:12 PM
To: Doug Chapin
Subject: Notification to Bidders

Notification to bidders

You are hereby advised that the U.S. Election Assistance Commission (EAC) has competitively awarded a contract to the Eagleton Institute of Politics at Rutgers, The State University of New Jersey for research assistance to support the development of guidance on the two topics of provisional voting and voter identification procedures. Eagleton is partnering with the Moritz College of Law of Ohio State University for this work effort. The amount of this award is $560,002.

EAC appreciates the interest you have expressed in supporting our research agenda by submitting a proposal for this work. Should you wish to receive a de-brief on this procurement, please contact Carol A. Paquette, Interim Executive Director, by email at **cpaquette@eac.gov.**

Regards,

Nicole K. Mortellito
Assistant to the Interim Executive Director
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC

202.566.3114 phone
202.566.3127 fax

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: June 30 Hearing Panelists

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:50 AM -----

"Tom O'Neill"
[redacted]
06/02/2005 05:30 PM

To jthompson@eac.gov
cc ireed@rutgers.edu, "Edward Foley" <foley.33@osu.edu>, klynndyson@eac.gov
Subject June 30 Hearing Panelists

Julie:

Thanks for you call. Our conversation helped me crystallize further the recommendations we will make to the Commission about the material to be covered at the hearing.

I believe we will recommend two panels of 3 or 4 people each for the June 30 hearing. One will cover the relatively narrow HAVA Voter ID requirements with presentations by 2 state-level voting administrators with contrasting experiences. The contrast between Michigan and Pennsylvania might prove especially instructive because it would demonstrate the relationship between the quality of the data base and requirements for voter identification. Since the hearing is being held in Manhattan, perhaps inviting a speaker from New York instead of Pennsylvania would make sense. I'd appreciate your thoughts on that.

Two other speakers could address the issue of broader Voter ID requirements to reduce vote fraud by requiring some form of identification for each voter at the polling place. The experience in Mississippi over the past 5 years has been particularly dramatic, as illustrated by the attached news article from the local press last year. As we discussed, inviting the 2 legislators profiled in the article might make for powerful testimony.

The final 2 speakers we believe should be academics who have studied the relationship between Voter ID regimes, voter participation and vote fraud and who have conflicting evidence and conclusions to offer. We have found at least two university based researchers who can present the view that stricter Voter ID requirement do not reduce vote fraud and do dampen participation. We have not yet identified a researcher from the other end of the spectrum, but we are looking actively. Your suggestions would be most welcome.

Below is our current list of possibilities for your review.

Tom

JUNE 30 HEARING
POSSIBLE PANELISTS OR TOPICS

Possible States to be represented by one or more panelists

Mississippi
Debate over voter id issues has been dramatic. The resonance of Mississippi on voting issues would lend interest to the testimony. Voter id legislation was not approved in the current legislative session and has been a source of contention at least since 1999.

Michigan
Strong database state; lax Voter ID requirements don't seem to present as much of a problem (although one hears rumors about Detroit); interesting contrast to NY. With Pennsylvania would present contrasts in the importance of the Statewide Voter Data Base

New York
Had a significant problem with provisional ballots, suggesting that their relatively lax ID rules might be problematic; also Tom Wilkey will have good contacts there. The hearing is there.

Pennsylvania
Relatively lax ID rules and apparently quite a few problems with provisional ballots in 2004. Had start up problems with its data base and would offer comparisons between counties where the data base was well established and those where is new. Should be weighed against New York for inclusion as a contrast with Michigan

Wisconsin
Governor Doyle vetoed the legislature's first attempt at tightening voter ID requirements, and instead offered a package to recruit and train more qualified poll workers and calls for improvements in voter registration procedures.

Academics on Voter ID, Turnout, and Vote Fraud

Spencer Overton
Professor, GWU Law School. Has written op-eds arguing that the empirical research is insufficient to support the need for more ID to reduce fraud. He is working on a book on the topic.

John Fortier
Research Fellow at the American Enterprise Institute. Recommended by Norm Ornstein. Google revealed no publications on this topic by Fortier.

Lorraine C. Minnite
Assistant Professor of Political Science, Barnard College. Lead researcher of the Demos election fraud study and researcher in immigrant voting patterns. Found that the incidence of fraud perpetrated by individual voters in the United States was very low and had a minimal impact on election outcomes.

Guy-UrielCharles
Associate Professor of Law, Center for the Study of Political Psychology University of Minnesota. His areas of interest incoude Election Law and Election Law Disputes and African American Voting Concerns. He is a member of the National Research Commission on Elections and Voting of the Social Science Research Council

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Arrangements for June 30 Meeting

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:50 AM -----

"Tom O'Neill"
[redacted]
06/01/2005 10:47 PM

To jthompson@eac.gov
cc klynndyson@eac.gov
Subject Arrangements for June 30 Meeting

Julie,

Karen Lynn-Dyson suggested I consult directly with you about arrangements for the Commission's June 30 meeting in New York. As I understood our discussions in Washington last week, as your consultants we will be responsible for organizing the portion of the meeting that will cover the Voter Identification issue, while EAC staff will organize the regular meeting of the Commissioners. Is that understanding correct?

Because time is short, we know we must move quickly on the arrangements.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

4. Will the EAC issue the news release about the meeting and the panel?

5. What do federal regulation indicate that I may offer speakers we bring in from

these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

These are the states we are currently evaluating for the Voter ID presentations: Arizona, California, Mississippi, .Michigan, New York, Pennsylvania, and Wisconsin. We may pick 4 of these, or fewer if we determine that one state should have two panelists representing different viewpoints: Karen tells me you have been working with several of these, and your counsel would sharpen the judgment we bring to bear on our selection. I am particularly interested in the Mississippi experience and would like to discuss that with you. . .perhaps by phone. The project team is aiming to agree on a panel of speakers to submit to the the EAC early next week. Panelists should receive their invitations at least two weeks in advance (more would be better), especially if we want to get onto their schedules.

I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can always reach me-- is 908-794-1030.

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:49 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: project kickoff meeting with EAgleton Institute

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:47 AM -----

Carol A. Paquette/EAC/GOV
05/17/2005 06:34 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC
Subject project kickoff meeting with EAgleton Institute

Commissioners -

We have tentatively scheduled May 26 at 2:30 for a kickoff meeting here with Eagleton Institute. What will happen at this meeting is Eagleton will introduce their key people and make a brief presentation on their approach to performing the provisional voting and voter ID studies. It will be an opportunity to ask questions, raise any concerns, and/or provide guidance as they begin this work. Please advise if you wish to attend this meeting. I expect it will last about an hour.

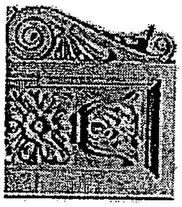
Carol A. Paquette
Interim Executive Director
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:46 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Prov Voting and Voter ID Reports

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:44 AM -----



Bert A. Benavides/EAC/GOV
06/19/2006 05:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc "Thomas O'Neill" [redacted], Thomas R. Wilkey/EAC/GOV@EAC
Subject RE: Prov Voting and Voter ID Reports

Karen, by copy I am attaching the referenced letter sent to Peter Weingart on 6-15-06.

Eagleton - Weingart, 6-16-06.doc

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
06/19/2006 04:51 PM

To "Thomas O'Neill" [redacted]
cc Bert A. Benavides/EAC/GOV@EAC
Subject RE: Prov Voting and Voter ID Reports

Tom-

Will ask Tom's office to get you a copy.

Regards-

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Deliberative Process
Privilege

U. S. ELECTION ASSISTANCE COMMISSION
OFFICE OF THE EXECUTIVE DIRECTOR
1225 New York Avenue, NW, Suite 1100
Washington, DC. 20005

June 15, 2006

Mr. John Weingart, Associate Director
Eagleton Institute of Politics
Rutgers University
191 Ryders Lane
New Brunswick NJ 08901-8557

Dear Mr. Weingart:

During a recent briefing by staff, the EAC discussed and reviewed possible next steps with the provisional voting and voter identification studies as well as the Eagleton contract which is scheduled to conclude on June 30, 2006.

We were in agreement that Eagleton's work on the EAC contract should conclude, as scheduled, by June 30, 2006. In preparation for this conclusion, the EAC requests that the comments and suggestions which were noted during the EAC's recent Board of Advisors and Standards Boards meeting (and were described in Mr. O'Neil's June 8, 2006 letter to Chairman DeGregorio) be included in the final draft report on provisional voting which Eagleton will deliver to the EAC on or about June 30, 2006. The Commissioners have determined that they will take this final draft report and, from it, may develop guidance and best practice recommendations that will be presented to the Board of Advisors and Standards Boards for further review.

The EAC Commissioners have also reviewed and considered next steps with the voter identification draft report which Eagleton has prepared. While the final disposition of the results and findings of this study, on the part of the EAC, are still unclear, the Commissioners have asked that the final draft report of this study also be prepared and submitted to the EAC not later than June 30, 2006.

We look forward to receiving these reports. On behalf of the EAC thank you for the considerable time and energy which the Eagleton/Moritz team has devoted to these critical election issues.

Sincerely,

Thomas R. Wilkey

"Thomas O'Neill" [redacted]

"Thomas O'Neill"
[redacted]
06/19/2006 04:30 PM

To klynndyson@eac.gov
cc
Subject RE: Prov Voting and Voter ID Reports

Karen,

I have not heard from Tom Wilkey. If he signed the letter you drafted for him last Tuesday, could you email me a copy while we await the arrival of the hard copy by mail. I probably don't need to remind you that we have only 11 days left on this contract and need to know how we should move ahead to complete it.

Tom O'Neill

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Friday, June 16, 2006 9:33 AM
To: tom_oneill@verizon.net
Subject: Re: Prov Voting and Voter ID Reports

Tom-

On Tuesday I drafted a letter for the Executive Director's signature.
He should be in touch today or Monday at the latest.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Thomas O'Neill" [redacted]

06/16/2006 08:49 AM

To klynndyson@eac.gov
cc
Subject Prov Voting and Voter ID Reports

Karen,

Could you please give me your reading of the status of a response to our letter last week that raised some issues for resolution by the Commission on the completion of our work during the final few weeks of the contract period. The Team needs to know how to proceed during the remaining 2 weeks of the project.

Thanks,

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:45 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Letter to Commissioner DeGregorio

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:43 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
06/08/2006 10:31 AM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Tom O'Neill" <[redacted]
Subject Letter to Commissioner DeGregorio

DeGregorioFinal.060806.doc Karen - I am attaching a copy of a letter we are just faxing and mailing
to Commissioner DeGregorio. Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Deliberative Process Privilege

EAGLETON INSTITUTE OF POLITICS

Paul S. DeGregorio
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
Fax: (202) 566-3127

June 8, 2006

Dear Chairman DeGregorio:

Karen Lynn-Dyson relayed the Commission's decision in your meeting of June 1 to take more time to consider how to proceed with the delivery of EAC research reports on provisional voting and voter identification.

The Eagleton-Moritz research team, of course, encourages the Commission's thoughtful consideration of the two reports, but we are mindful of the need to deliver revised documents that respond to the Commission's comments by the close of our contract on June 30th. We believe that if we receive the Commission's final comments on the Provisional Voting report by June 19 we will be able to complete any additional work that the Commission might request and incorporate the results in our final reports before the end of the contract period.

Based on suggestions raised at the meetings, we already plan to supplement the Provisional Voting report with some brief, additional information about the influence of the fail-safe ballot provisions of the National Voting Rights Act on the experience with provisional voting in 2004.

We understand that the Commission must submit the final draft Voter ID report to the same review process by your advisory boards as was followed with the Provisional Voting paper. We understand that step is a prerequisite for wider release. We would appreciate your advice on how to handle this review, given the rapidly approaching end of our contract.

We hope the commission will use both reports, as intended from the outset of this project, as the basis for recommendations for better, if not best, practices to the states. If the Commission cannot decide to issue such recommendations to the states, we hope it will promptly release the reports to provide the states and the broader elections community with this information, analysis and perspective on the issues.

We recognize, based on the reactions at the meetings of the Standards Board and, particularly, the Board of Advisors, that some of the findings, conclusions, and recommendations of the reports will be controversial with some of the Commission's constituencies. But we also believe, based on the comments of the Peer Review Group, the advisors assembled by the Commission, and our response to their critiques, that the reports are grounded on solid research by a well-qualified, nonpartisan team and that the reports will provide new information for the policy process. We believe this information will contribute to achieving the EAC mission of providing helpful information that the states may or may not choose to implement.

191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557

Tel: (732) 932-9384
Fax: (732) 932-6778

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

E-mail: eagleton@rci.rutgers.edu
Web: www.eagleton.rutgers.edu

The information in the reports can improve the policy process by raising the level of debate over increasingly volatile issues related to election administration. We believe our reports will prove useful to the states as they complete preparations for the 2006 elections. Moreover, the elections community is aware of this work, and awaits the analysis and conclusions.

We look forward to working with you to conclude this research in a way that will serve the public interest.

Very truly yours,

Thomas M. O'Neill
Project Director

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:45 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Presentations at the EAC Governing Boards

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:43 AM -----

"Tom O'neill"
[redacted]
05/22/2006 03:39 PM

To klynndyson@eac.gov
cc asherrill@eac.gov, jthompsonhodgkins@eac.gov
Subject RE: Presentations at the EAC Governing Boards

Karen,

The PowerPoint presentations for the Standards Board and the Advisory Board are attached. See you tomorrow.

Tom O'Neill

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, May 22, 2006 3:18 PM
To: [redacted]
Cc: asherrill@eac.gov; jthompsonhodgkins@eac.gov
Subject: RE: Presentations at the EAC Governing Boards

Hi Tom-

Just checking to see if your Power Point slides might be ready.

When they are, please send them on to me and hit Reply to All as Julie Hodgkins and Amie Sherrill (the Chairman's Special Assistant) would like copies before the presentation.

Thanks

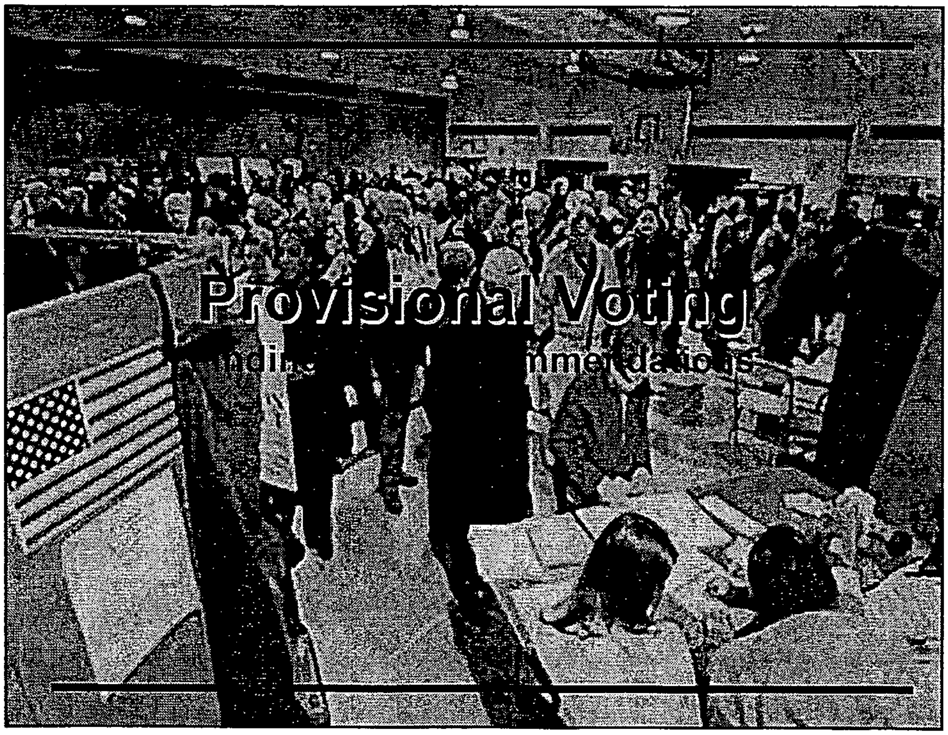
BriefinfgPVADVBD524.ppt BriefinfgPVSTDBD523.ppt

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission

1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Briefing for
U. S. Election Assistance Commission
Board of Advisors

May 24 , 2006



Provisional Voting

ndi[illegible] mmendations

EAGLETON INSTITUTE OF POLITICS

Rutgers, The State University of New Jersey

MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY

Project Management Team

Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics
Board of Governors Professor of Politics
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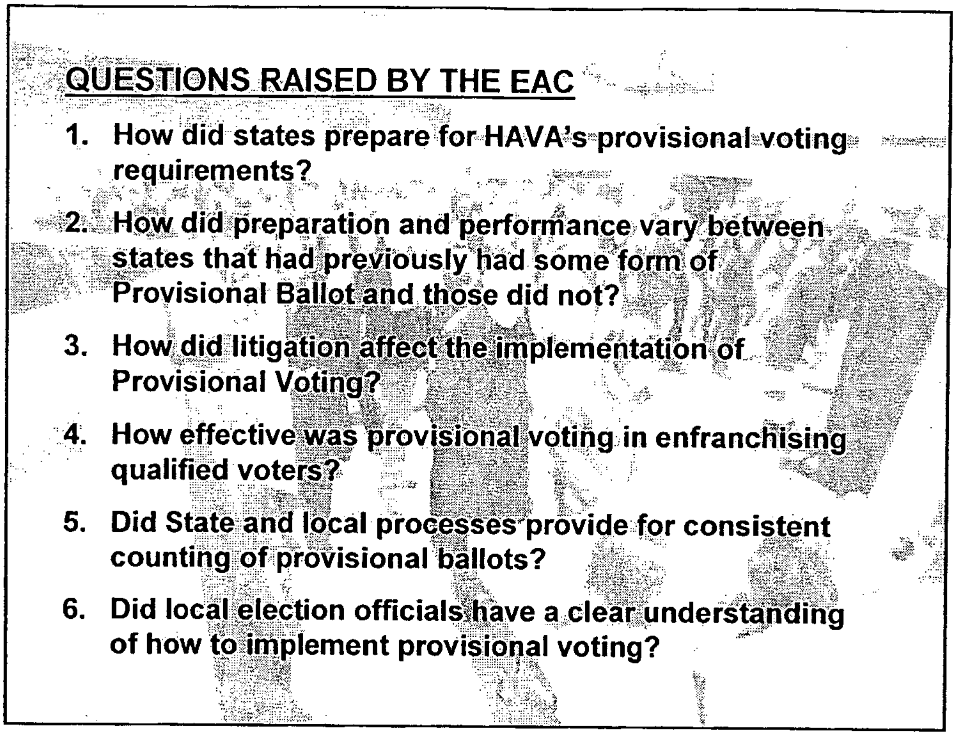
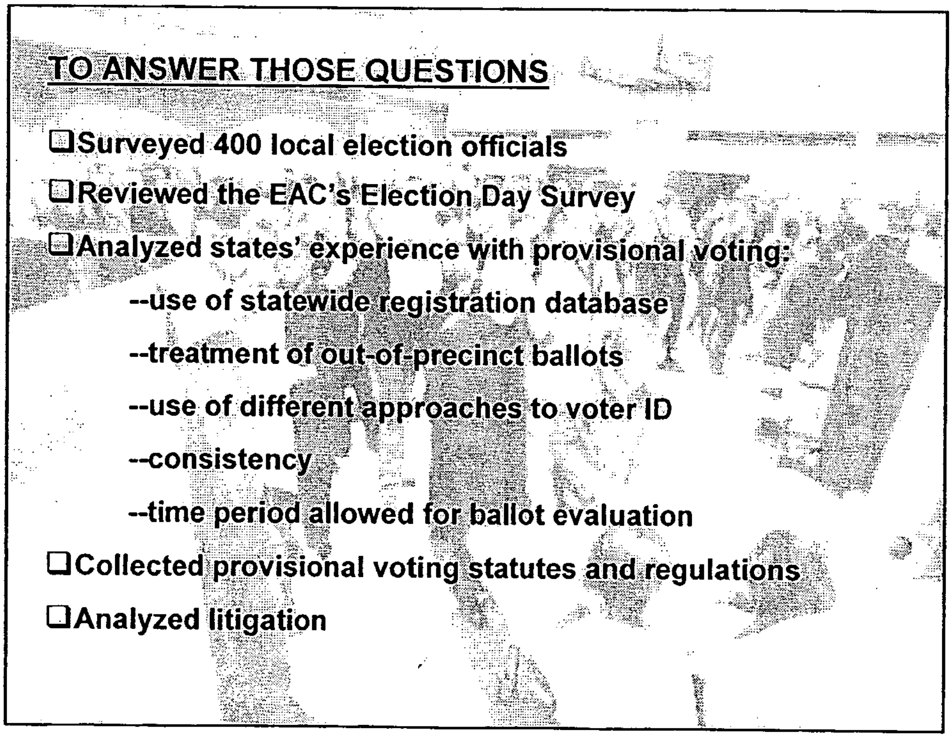


QUESTIONS RAISED BY THE EAC

1. How did states prepare for HAVA's provisional voting requirements?
2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?
3. How did litigation affect the implementation of Provisional Voting?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did State and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?



TO ANSWER THOSE QUESTIONS

❑Surveyed 400 local election officials

❑Reviewed the EAC's Election Day Survey

❑Analyzed states' experience with provisional voting:

--use of statewide registration database

--treatment of out-of-precinct ballots

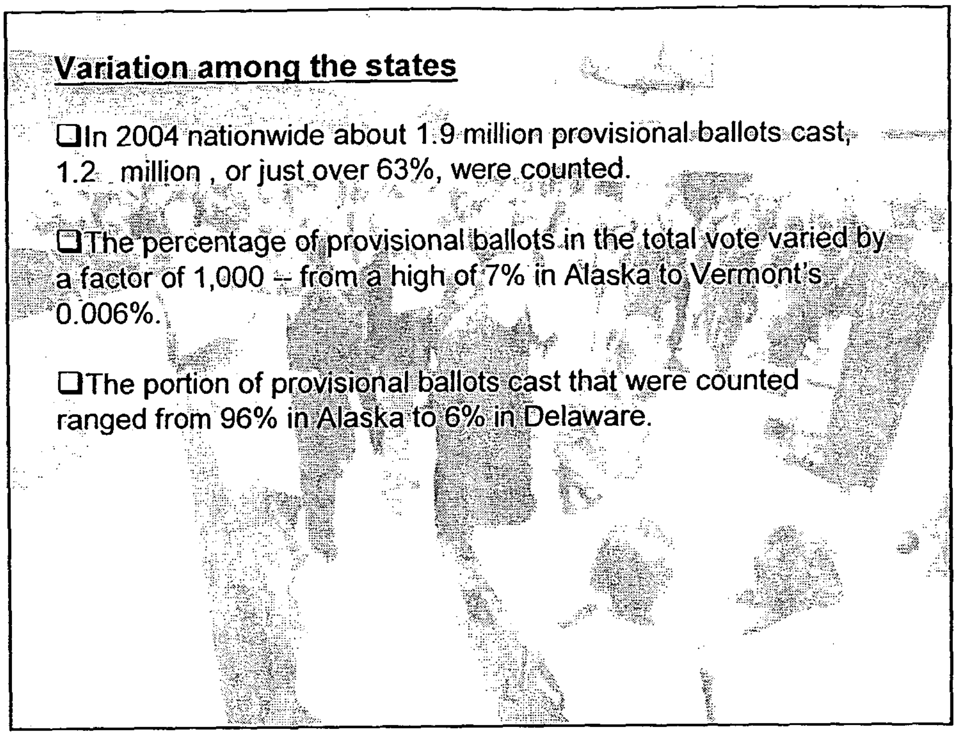
--use of different approaches to voter ID

--consistency

--time period allowed for ballot evaluation

❑Collected provisional voting statutes and regulations

❑Analyzed litigation

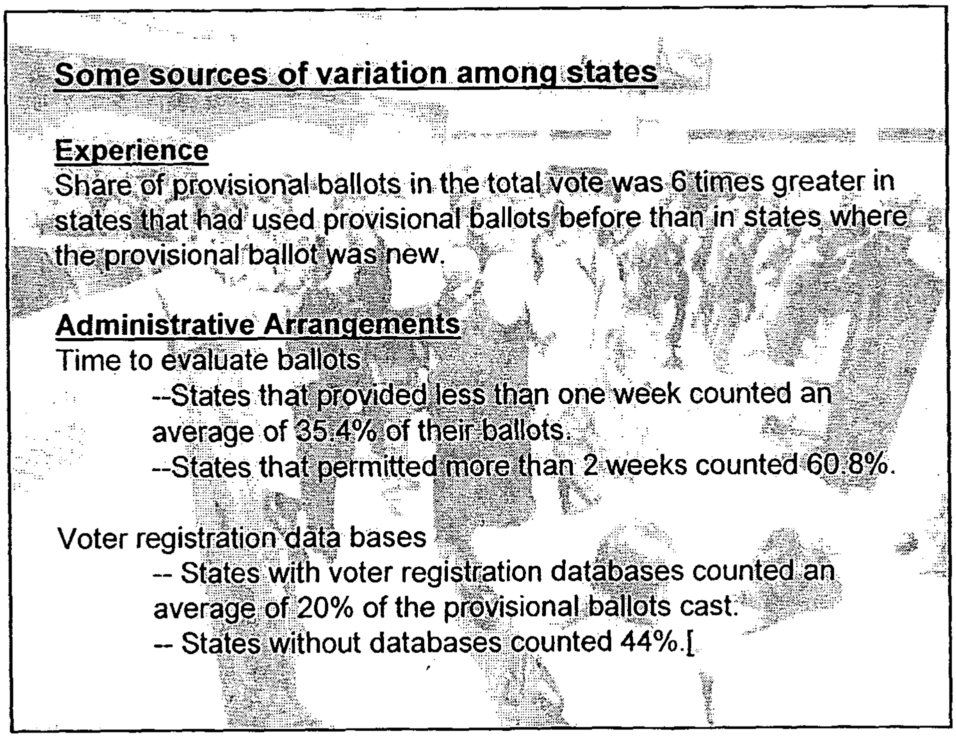


Variation among the states

☐In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million , or just over 63%, were counted.

☐The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.

☐The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.



Some sources of variation among states

Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

Administrative Arrangements

Time to evaluate ballots

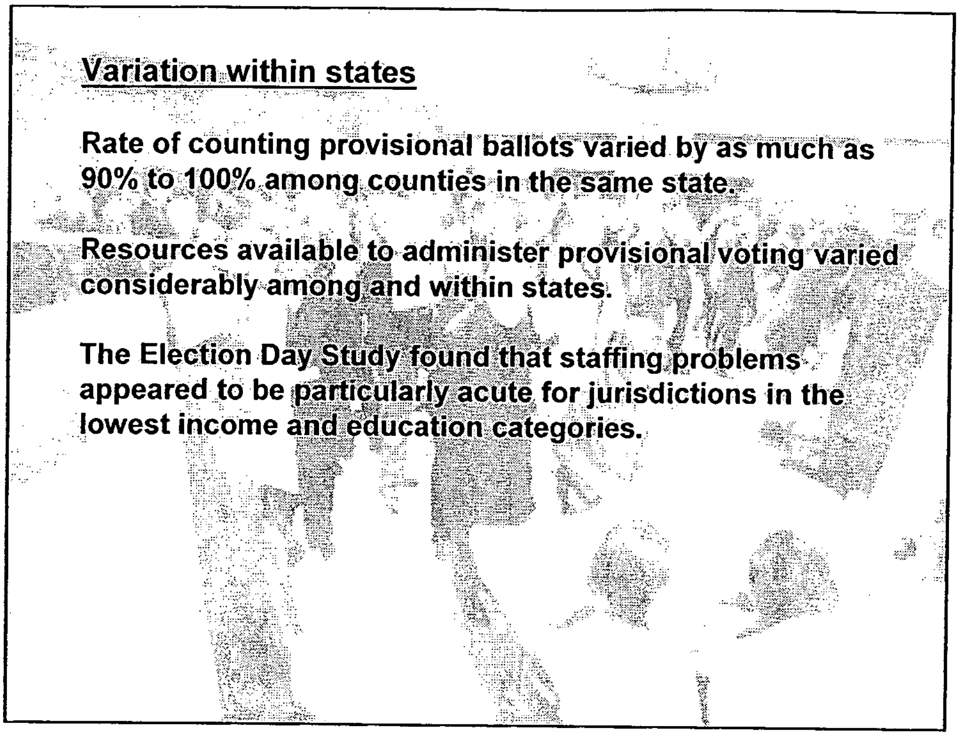
--States that provided less than one week counted an average of 35.4% of their ballots.

--States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

-- States with voter registration databases counted an average of 20% of the provisional ballots cast.

-- States without databases counted 44%.[

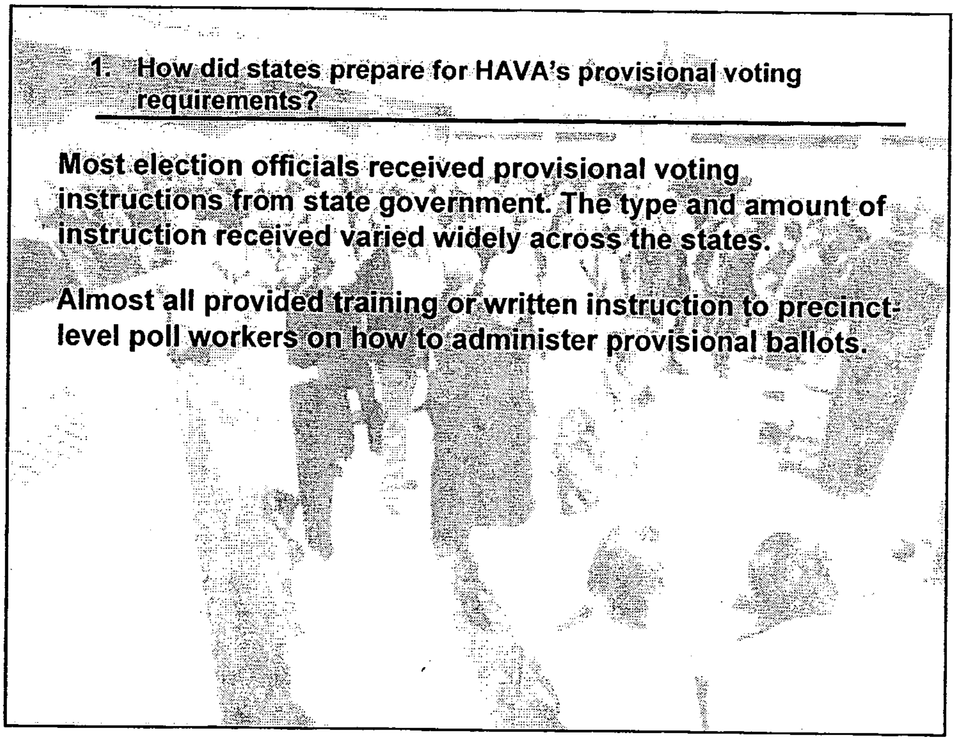


Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied considerably among and within states.

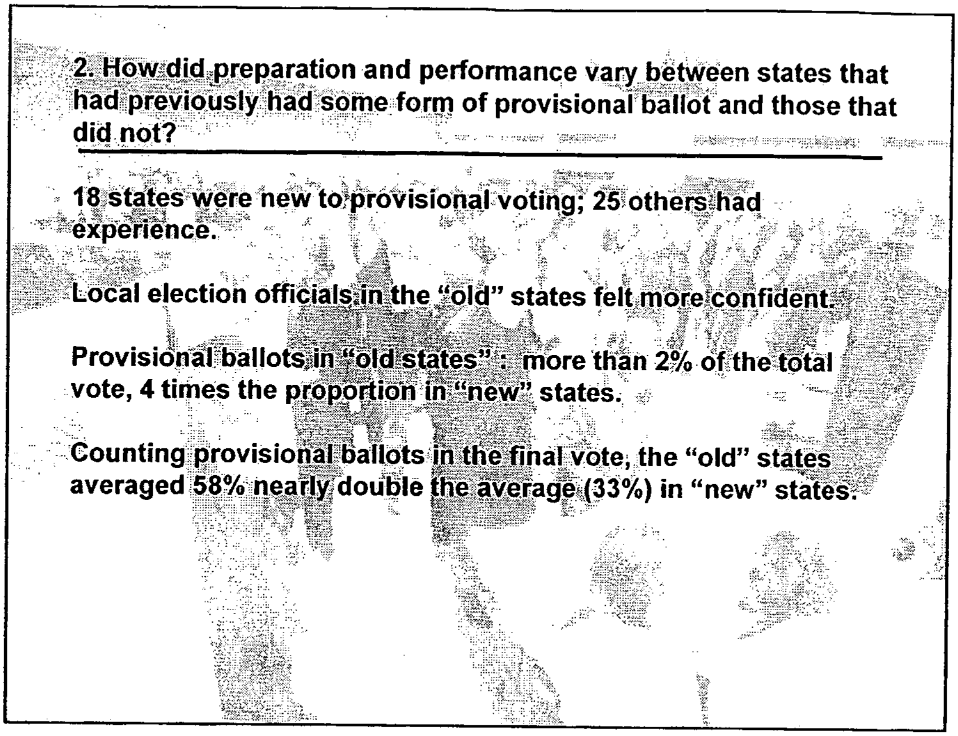
The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.



1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.



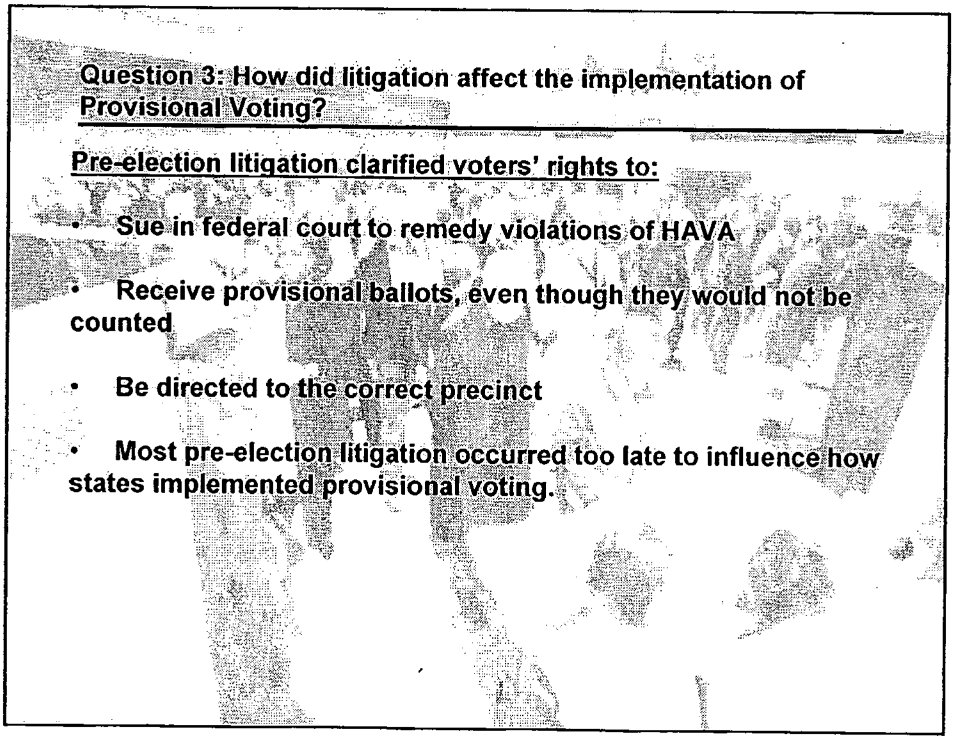
2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

18 states were new to provisional voting; 25 others had experience.

Local election officials in the "old" states felt more confident.

Provisional ballots in "old states" : more than 2% of the total vote, 4 times the proportion in "new" states.

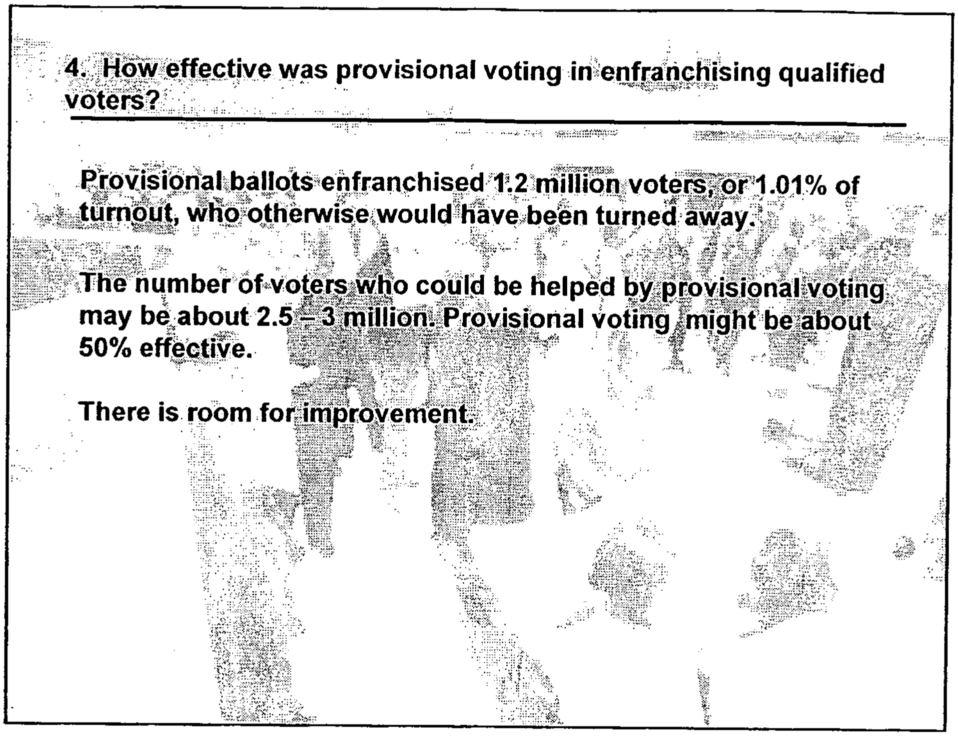
Counting provisional ballots in the final vote, the "old" states averaged 58% nearly double the average (33%) in "new" states.



Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.

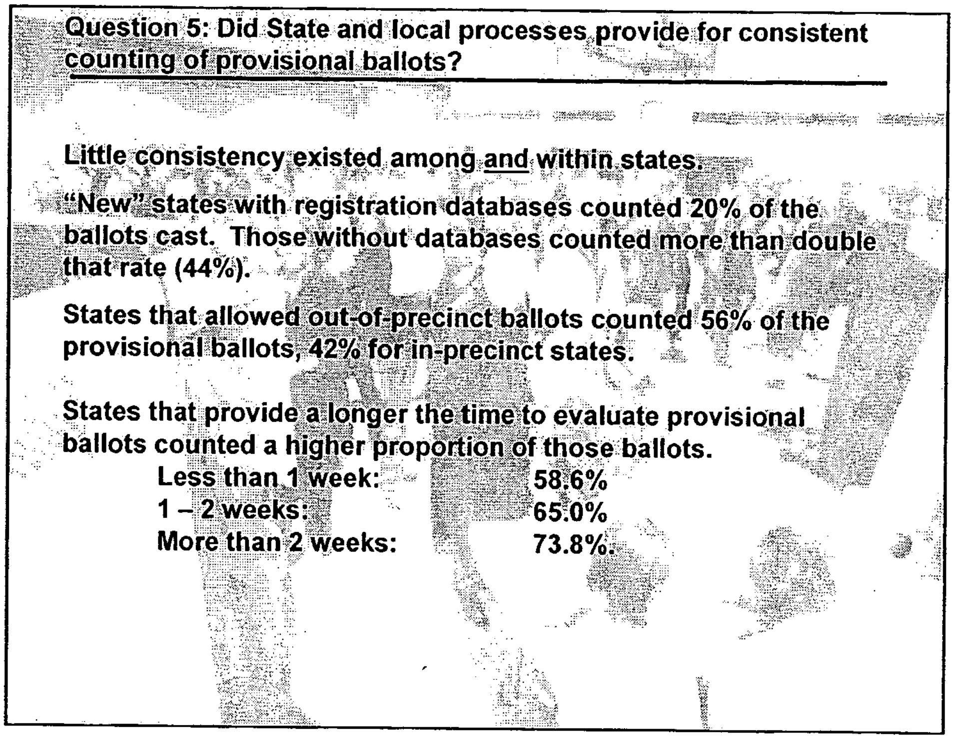


4. How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.



Question 5: Did State and local processes provide for consistent counting of provisional ballots?

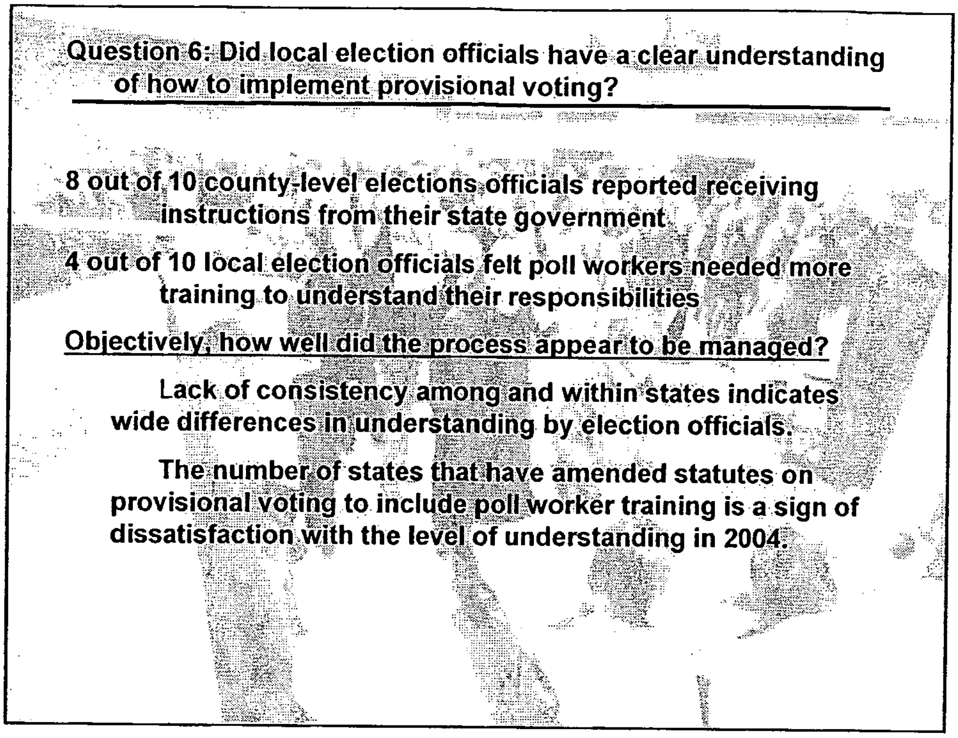
Little consistency existed among <u>and</u> within states.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

States that allowed out-of-precinct ballots counted 56% of the provisional ballots, 42% for in-precinct states.

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%



Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

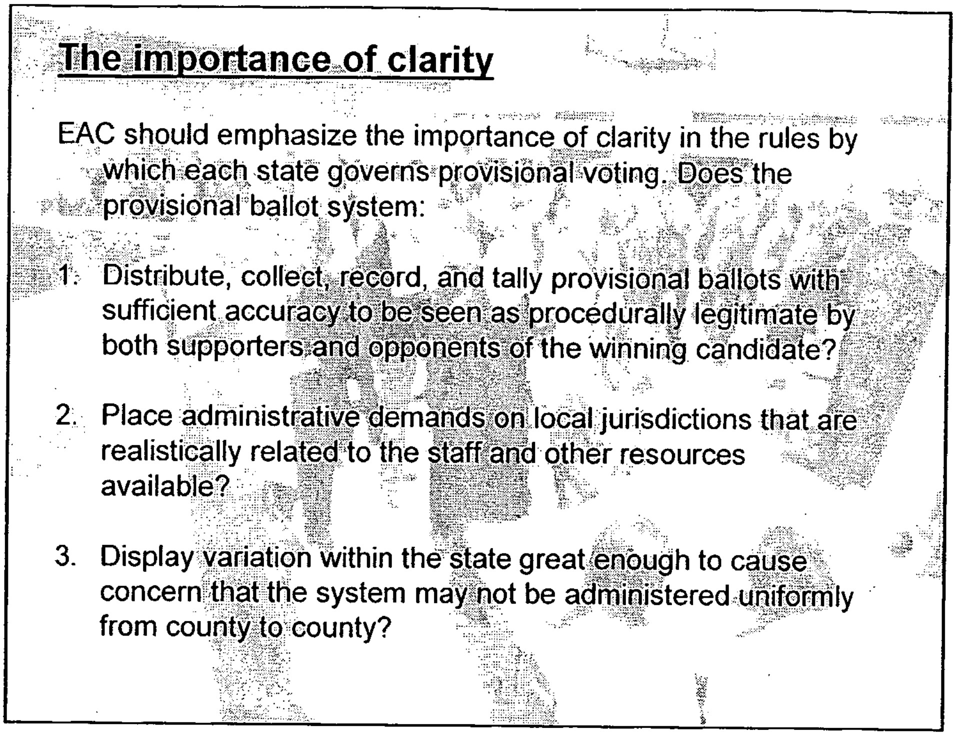
Objectively, how well did the process appear to be managed?

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

RECOMMENDATIONS TO THE EAC

BEST PRACTICES



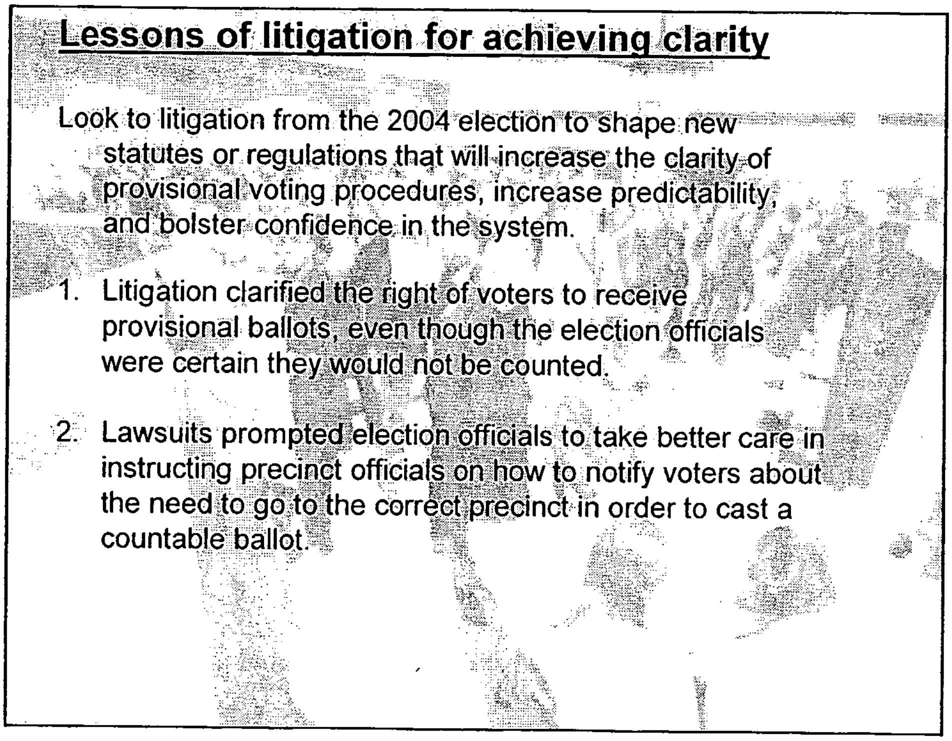
The importance of clarity

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?

2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?

3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

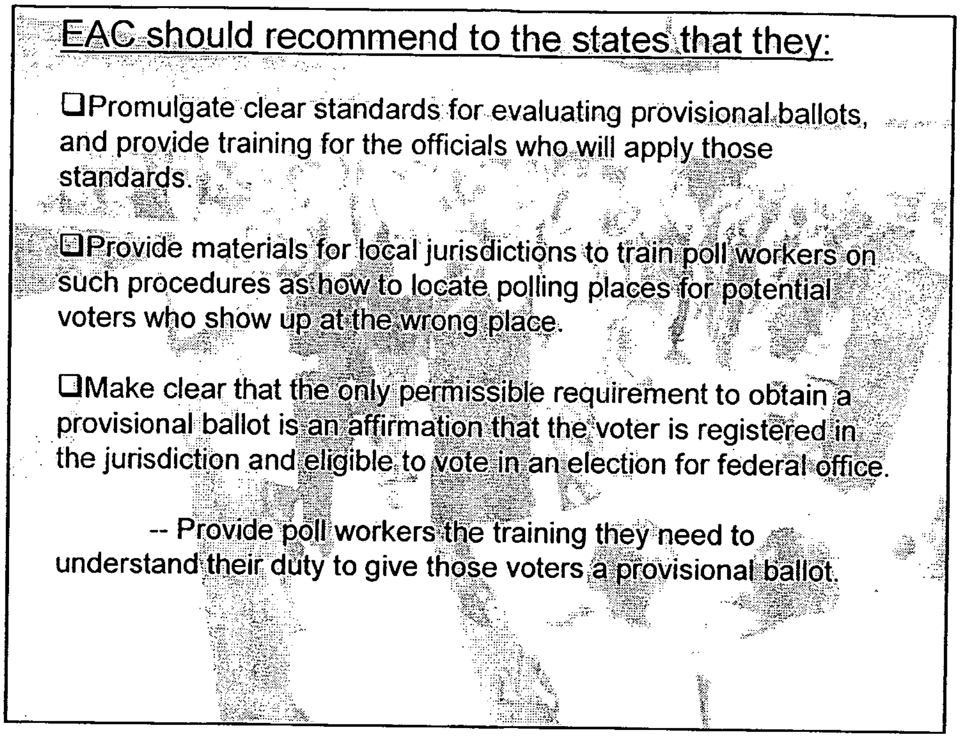


Lessons of litigation for achieving clarity

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.

2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.



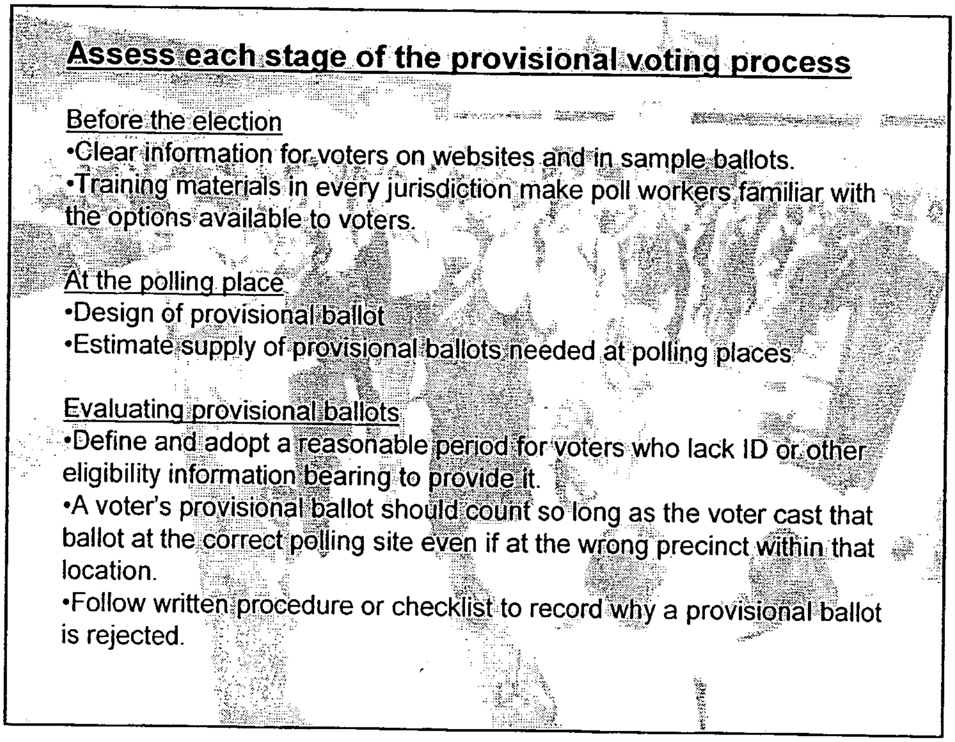
EAC should recommend to the states that they:

☐Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

☐Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

☐Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.



Assess each stage of the provisional voting process

Before the election
- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

At the polling place
- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

Evaluating provisional ballots
- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
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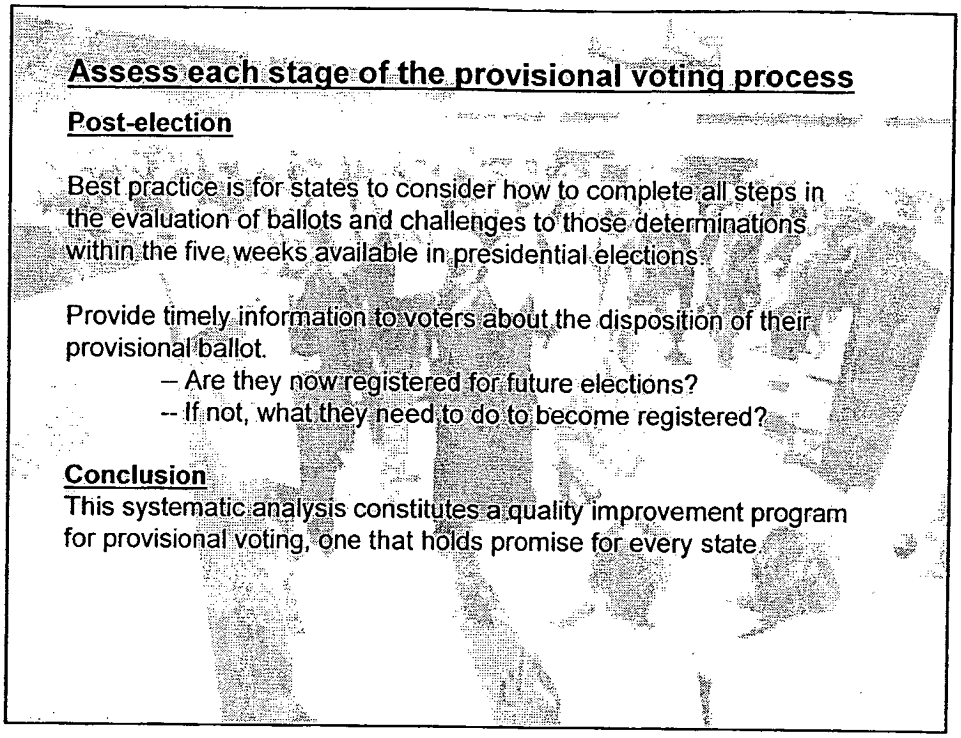
- Follow written procedure or checklist to record why a provisional ballot is rejected.



Assess each stage of the provisional voting process

Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.
- – Are they now registered for future elections?
- -- If not, what they need to do to become registered?

Conclusion

This systematic analysis constitutes a quality improvement program for provisional voting, one that holds promise for every state.

Briefing for

U. S. Election Assistance Commission
Advisory and Standards Board

DISCUSSION AND QUESTIONS

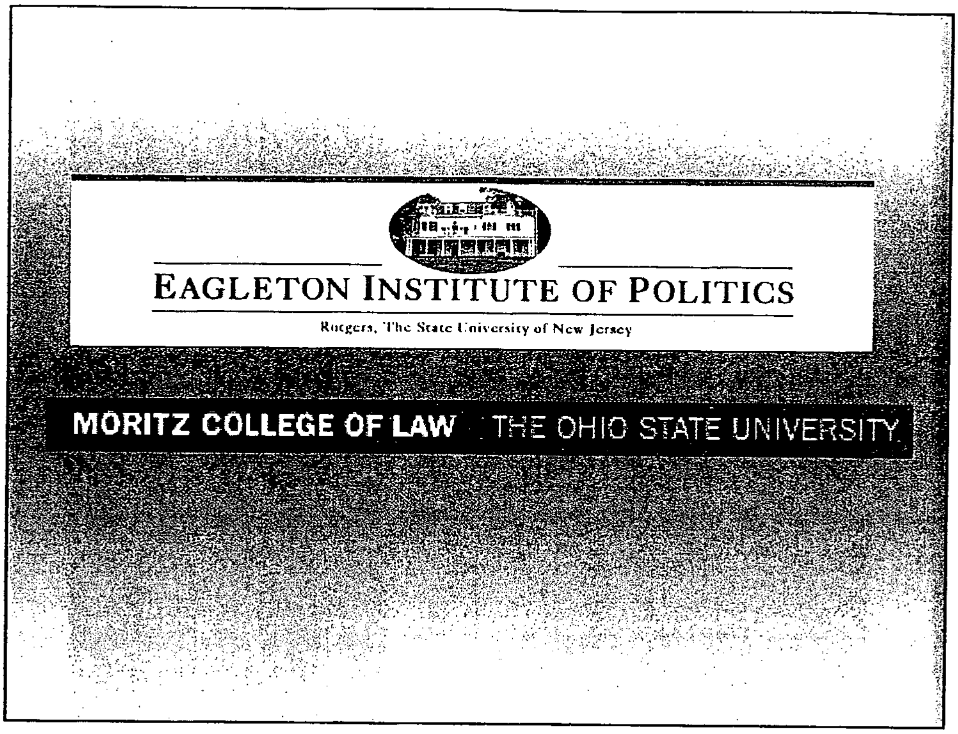
May 2006

Briefing for
U.S. Election Assistance Commission
Standards Board

May 23 , 2006

Provisional Voting

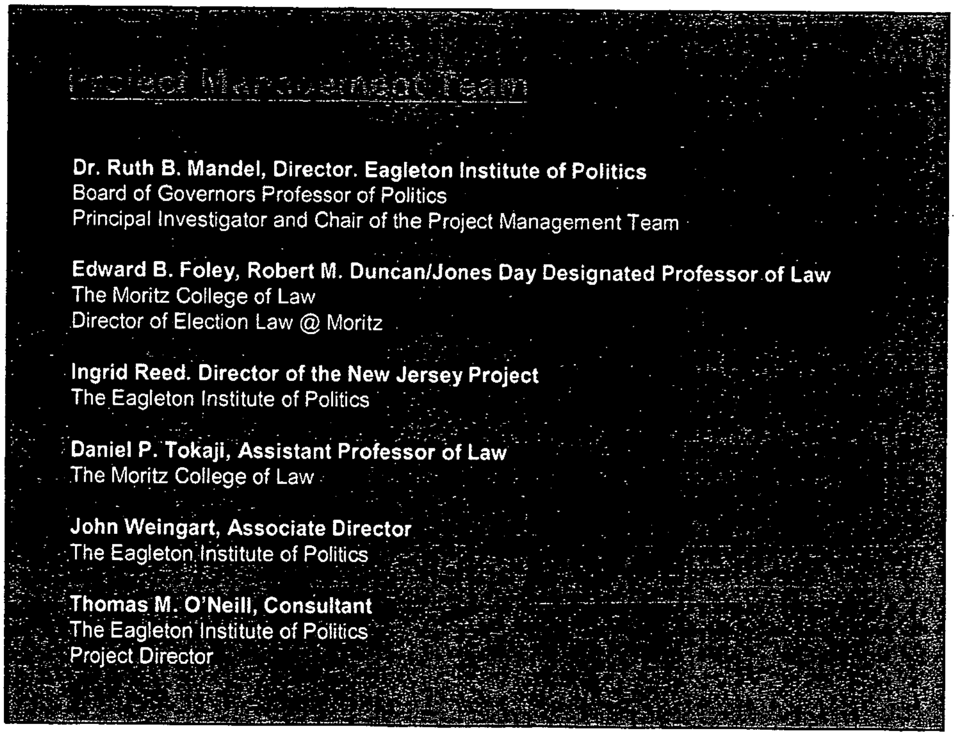
Findings and Recommendations



EAGLETON INSTITUTE OF POLITICS

Rutgers, The State University of New Jersey

MORITZ COLLEGE OF LAW . THE OHIO STATE UNIVERSITY



Project Management Team

Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics
Board of Governors Professor of Politics
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John Weingart, Associate Director
The Eagleton Institute of Politics

Thomas M. O'Neill, Consultant
The Eagleton Institute of Politics
Project Director

QUESTIONS RAISED BY THE EAC

1. How did states prepare for HAVA's provisional voting requirements?
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3. How did litigation affect the implementation of Provisional Voting?
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--use of different approaches to voter ID

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Variation among the states

☐In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million , or just over 63%, were counted.

☐The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.

☐The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

Some sources of variation among states

Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

Administrative Arrangements

Time to evaluate ballots

--States that provided less than one week counted an average of 35.4% of their ballots.

--States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

-- States with voter registration databases counted an average of 20% of the provisional ballots cast.

-- States without databases counted 44%.

Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied.

--The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

--Small, rural jurisdictions and large, urban jurisdictions reported higher rates of an inadequate number of poll workers

--Jurisdictions in poor areas reported more inactive voter registrations and more provisional ballots cast.

--Richer areas had more poll workers per polling place and reported lower rates of staffing problems per precinct.

1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- **•Only about 1 in 10 made available to poll workers a voter registration database.**
- **•Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

Local election officials in the "old" states felt more confident.

18 states were new to provisional voting; 25 others had experience.

"New" state officials felt:

-- Voters did not receive enough information about where to cast a provisional ballot in order to be counted.

-- More funding was needed to educate voters about their rights to cast a provisional ballot.

Provisional ballots in "old states" : more than 2% of the total vote, 4 times the proportion in "new" states.

Counting provisional ballots in the final vote, the "old" states averaged 58% nearly double the average (33%) in "new" states.

Question 3: How did litigation affect the implementation of Provisional Voting?

Pre-election litigation clarified voters' rights to:

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.

4. How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the "new" states.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the state's Voter ID requirements the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

In-precinct versus out-of-precinct states had different outcomes.

States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

In "old" states, this difference was greater.

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

14 states permitted less than 1 week :	35.4%
15 states permitted 1 – 2 weeks:	47.1%
14 states permitted more than 2 week:	60.8%.

Effect felt most strongly in states where more than 1% of the overall turnout was of provisional ballots.

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Conclusions

States have latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.

Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

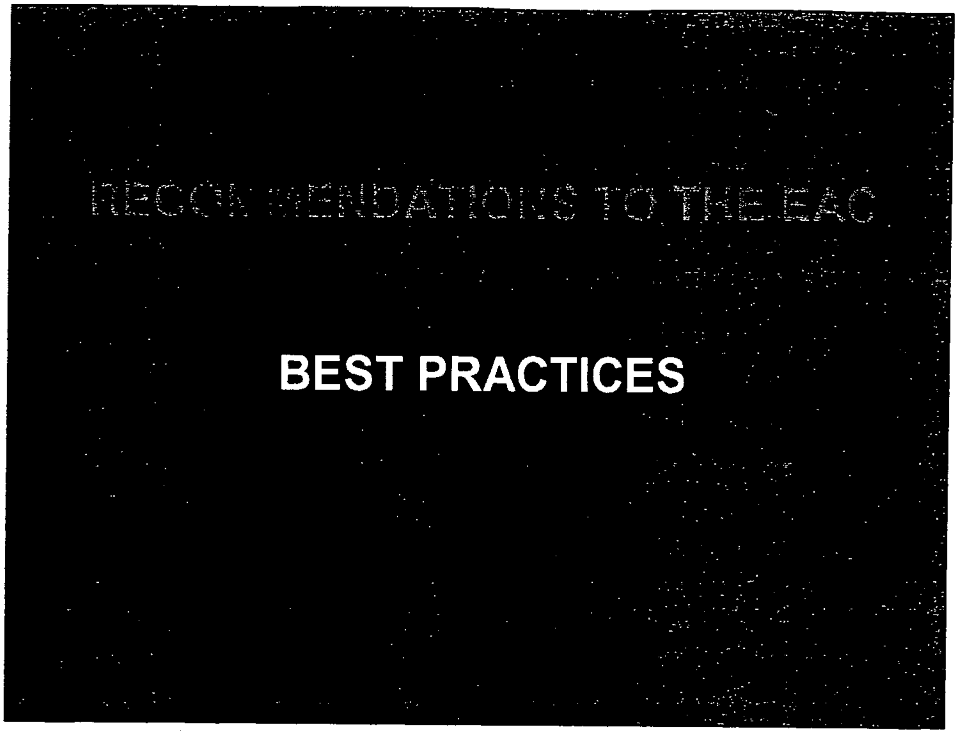
8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

Objectively, how well did the process appear to be managed?

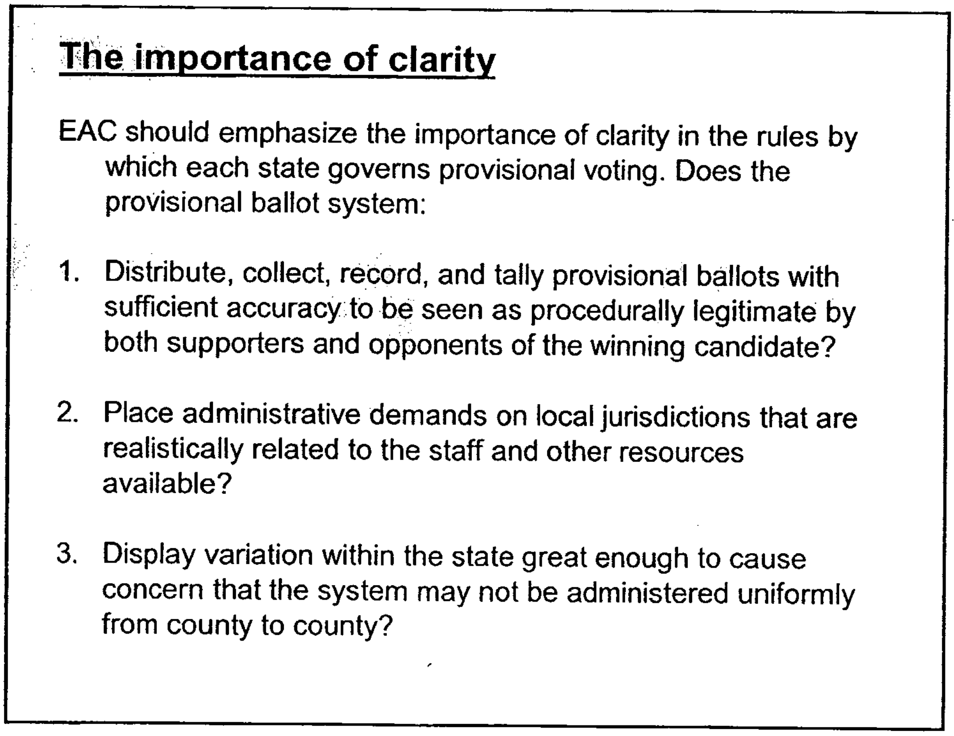
Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.



RECOMMENDATIONS TO THE EAC

BEST PRACTICES



The importance of clarity

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
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3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

Lessons of litigation for achieving clarity

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

EAC should recommend to the states that they:

☐Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

☐Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

☐Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

EAC should recommend quality improvement

Begin a systematic quality improvement program by collecting data on the provisional voting process. Data collected should include:

- ☐Specific reasons why provisional ballots were not counted
- ☐Measures of variance among jurisdiction
- ☐Time required to evaluate ballots by jurisdiction
- ☐Provisional votes cast and counted by jurisdiction

Assess each stage of the provisional voting process

Before the election
- •Clear information for voters on websites and in sample ballots.
- •Training materials in every jurisdiction make poll workers familiar with the options available to voters.

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- •Design of provisional ballot
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Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

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Briefing for

U. S. Election Assistance Commission

Advisory and Standards Board

DISCUSSION AND QUESTIONS

May 2006

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:43 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Voter ID Paper --Final Draft

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:42 AM -----

Thomas R. Wilkey/EAC/GOV
04/28/2006 12:50 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: Voter ID Paper --Final Draft

Karen,
Was this part of the contract. I thought their was a peer review group in place,

----
Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 04/28/2006 12:44 PM
To: Tom O'neill" <[redacted]
Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; [redacted] rmandel@rci.rutgers.edu; Tim Vercellotti" <tim.vercellotti@rutgers.edu>; tokaji.1@osu.edu
Subject: Re: Voter ID Paper --Final Draft

Tim, Tom, John, et.al--

The EAC has identified three academics who are going to serve as peer reviewers of the Eagleton Voter ID paper and research.

They are Jonathan Nagler of New York University, Jan Leighley, University of Arizona, and Adam Berinsky of MIT.
They are ready to review the documents as soon as they are available.

I would like to them one week to review the material and then have a joint conference call on Thursday, May 11, in which we would all have an opportunity to discuss the research methodology and statistical analysis, along with general comments and suggestions.

If you are able to get to me the paper and the supporting data analysis, I will distribute to the documents ASAP.
Also let me know, if you would, your availability on May 11 to do this conference all.

I anticipate that it will last approximately 90 minutes.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:42 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: No-Cost Extension Request

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:40 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
04/21/2006 09:52 AM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'Neill" <[redacted]
Subject No-Cost Extension Request

Karen - We are requesting a no-cost extension on the EAC contract to the Eagleton Institute of Politics at Rutgers University to have the contract's concluding date move from March 31, 2006 to June 30, 2006. As I indicated earlier, it would be very helpful if we could receive approval of this request no later than April 28th.

This extension is necessary to enable the following activities:

1. The EAC has informed us that it will assemble a panel of researchers the week of May 8th to review the Eagleton/Moritz draft background report on Voter Identification. The EAC wishes to supplement the review of this draft already conducted by the Peer Review Group called for in the contract. The Eagleton/Moritz research team, as well as at least some of the Peer Review Group will participate in the conference call or meeting of the EAC's reviewers;

2. Eagleton/Moritz will revise the draft Voter Identification report based upon comments made by the two sets of reviewers, and distribute the revised report to the EAC and its Advisory Board in mid-May.

3. Eagleton/Moritz will present its draft reports on Provisional Voting and Voter Idenfitication to the EAC Advisory Board at its May 25th meeting in Washington, D.C.;

4. Eagleton/Moritz will revise both draft reports to take into account comments made by the EAC Advisory Board, and submit printed final reports to the EAC before June 23rd. Eagleton/Moritz will also prepare a PowerPoint presentation for both reports.

5. Eagleton/Moritz will present both reports at the EAC public meeting in Washington, D.C. on June 23rd, thus concluding its work under this contract.

Please let me know if you need any additional information.

Thanks,

John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:41 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Extension Timeline

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
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tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:40 AM -----

Tamar Nedzar/EAC/GOV
04/19/2006 12:23 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Re: Fw: Extension Timeline

K (Lynn-Dyson)-

I saw this before. It's helpful for me to know the proposed end-date, but what we need to get Tom's signature--for this project and Cleveland State--is a memorandum to the file explaining why we are granting the extension and modification, respectively.

From what I understand, in addition to other things, we need the memo in the file to explaine our thought process if anything is ever challenged. I think that Eagleton wrote the memo for you last time, but if not, I know you gave it to me...

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
04/19/2006 12:06 PM

To Tamar Nedzar/EAC/GOV@EAC
cc
Subject Fw: Extension Timeline

T (Nedzar)-

Is this at all useful or not?

K
Karen Lynn-Dyson
Research Manager
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 04/19/2006 12:01 PM -----

"John Weingart"
<john.weingart@rutgers.edu>
04/13/2006 03:18 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc
Subject Extension Timeline

ExtensionTimeLine.doc

Karen - Tom and I are about to call. Attached is our proposed revised timeline.

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Timeline for EAC contract extension period (April – June)

Date/Time period	**Activity**
April 1 - 2	*Prepare briefing for EAC*
April 3	*Briefing EAC in Washington*
April 9 – 10	*Prepare timeline for contract extension and March progress report.*
April 11	*Team meeting: review and approve new timeline*
April 12 – 13	Discussion with Karen Lynn-Dyson about contract extension and schedule for teleconference involving EAC, members of the PRG, and our researchers on out statistical analysis of voter ID and turnout.
April 14 - 19	Submit request for no-cost extension until June 30 to permit briefing the EAC 's Advisory Committees in May and a presentation at the EAC's June public meeting about our research.
April 26 – May 5	Prepare for and participate in teleconference with PRG, EAC and our researchers. Prepare April Progress Report.
May 5	Revise Voter ID paper to reflect new comments in teleconference.
April 28 – May 10	Prepare and produce final reports on Provisional Voting and Voter ID, with appendices and supporting materials. Circulate for comments. Revise and complete.
May 10 – 12	Distribute final reports to EAC and its advisory boards.
May 11 – 18	Prepare power point brief on Provisional Voting and Voter ID for EAC Advisory Board meeting. Distribute hard copy of PowerPoint presentation to Advisory Boards a week before their meeting.
May 25	EAC Advisory Boards Meeting
May 26 – June 2	Teleconference with EAC to review reaction of Advisory Boards to the reports. Prepare May progress report
June 2 – 9	Revise summary report to take account of Advisory Boards' comments. Circulate for comments and complete.
June 12 – 16	Produce printed version of final summary report. Prepare PowerPoint presentation for EAC meeting.
June 23	Presentation of complete report at EAC public meeting. **June 30 Project complete**

See items for discussion at our April 13 teleconference on the next page.

Items for discussion

1. What paperwork needs to be completed to approve the no-cost extension, and what would be the schedule for review and action by the EAC?
2. Set a date for teleconference at which EAC staff and/or commissioners can participate in a discussion with members of the Peer Review Group and Eagleton-Moritz researchers on the statistical analysis of the effects of various voter ID requirements on turnout.
3. What arrangements need to be made, and by what date, to provide for review of our reports and analysis by the EAC's Advisory Boards, presumably at the Boards' May meeting? What form would that presentation take? What parts of our work would be submitted to the Advisory Boards – summary reports, selected research papers, substantially all back up research?
4. Following the Advisory Board meeting, what arrangements need to be made, and by what date, to present our work at the public meeting of the EAC in June?
5. What is the preferred form for the delivery of our reports –hard copies, electronic copies.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:40 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Attendance at Monday Meeting

April 3 Eagleton close-out meeting attendance

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
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tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:38 AM -----

"Tom O'neill"
[redacted]
03/31/2006 05:19 PM

To klynndyson@eac.gov
cc
Subject Attendance at Monday Meeting

Karen,

Here is the roster of the members of our team who will attend the meeting on Monday.

David Andersen, Graduate Assistant, The Eagleton Institute of Politics
John Harris, Graduate Assistant, The Eagleton Institute of Politics
Ingrid Reed, Director, New Jersey Project, The Eagleton Institute of Politics
Dan Tokaji, Assistant Professor of Law, Moritz College of Law
Tim Vercellotti, Assistant Director, Eagleton Center for Public Interest Polling,(principal author of the analysis of voter ID requirements on turnout)
John Weingart, Associate Director, The Eagleton Institute of Politics
Tom O'Neill, Project Director, The Eagleton Institute of Politics

Tom

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:39 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Eagleton/MoritzVoter ID Report

Put in the portion of the file related to the Voter ID Draft Report and Survey

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:37 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
03/21/2006 10:45 AM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'Neill" [redacted]
Subject Re: Eagleton/MoritzVoter ID Report

Karen - Here is a reply to your question. Sorry not to have gotten it to you more quickly.

There are a couple of reasons why we used the CPS. Most importantly, it is a survey of individual voters, as opposed to election officials. The CPS allows us to make inferences about individual-level charactertistics (such as the age, race, education and income of each registered voter who responded to the survey), and how those characteristics combine with voter ID requirements to influence turnout. Also, the sample size is large, allowing for reliable analysis of sub-populations (just Hispanic voters, for example). Because of those two factors, most of the scholarly studies of voter turnout and the institutional and individual-level factors that go into turnout use the CPS.

The EAC also might ask why we collected our own aggregate data as opposed to using the results of the Election Day survey. We could provide greater detail if needed, but, in brief, the EAC Election Day Survey draws data from the jurisdiction that handles elections. In many states that is the county, but in the New England states the EAC Election Day Survey uses towns as its unit of analysis. Our aggregate data atempts to match voter turnout data to Census data, which we have gathered at the county level.

Conceivably, we could have gone through and matched Census data to towns for the New England states, but that would have been very time-consuming. Moreover, it would also have posed a problem with the statistical analysis of the aggregate data, which assumes a two-level statistical model with counties as the first level and states as the second level. Inserting a third level of towns just for the New England states would require that each town in each county be coded with vote totals and Census data for each. That would take months.

Let me know if you need additional information of would like to discuss.

Thanks, John

klynndyson@eac.gov wrote:

>
> Quick question-
>
> What was Eagleton's thinking behind using CPS data rather than EAC's
> Election Day Survey for the Voter ID report?
>
> Thanks
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:37 AM

To darrell lee
cc
bcc
Subject Fw: Comments on the Eagleton draft

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:36 AM -----

Paul DeGregorio/EAC/GOV
02/13/2006 04:58 PM

To Karen Lynn-Dyson/EAC/GOV
cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV
Subject Comments on the Eagleton draft

Karen,

As requested, here are my comments on the Eagleton draft regarding provisional voting. Please feel free to contact me should you (or they) need clarification. Thanks.

Comments on the Eagleton draft on Provisional Voting

Executive Summary needed. In reading the document in total, it appears to me that it needs an executive summary in the beginning to lay out some of the background and summarize the recommendations made in the document.

Their statistics on page 4 indicating that "just over 63% "provisional votes were counted does not match with our 2004 Election Day survey, which stated that "64.5%" were counted. Also on the top of page 5, they indicate the "experienced" states counted an average of "58%" of provisional ballots while "new" states only counted "33%" of provisionals. Since the average on provisional ballots cast was 64.5% counted, the third category (which is not described in those bullets) had to account for a significant amount over 64.5% (since that was the average of all states). What was that category?

For some reason they don't seem to include an argument made by many that one reason provisionals must be cast in the right precinct in order to be counted is that local races are also important and that allowing provisionals to be counted by voters who cast them outside the precinct (and only counting for the upper ballot races outside the precinct) can disenfranchise voters from participating in local races. This argument has been used by many legislatures (and in court cases) to require that provisional ballots must be cast in the correct precinct in order to be counted.

Recommendation A.3 on top of page 14 encourages state websites to have particular information. Why don't they also recommend that local websites do the same?

Recommendation B.4 middle of page 14 talks about NM requiring poll worker training. Seems like most states require training; do they have data on that? Florida's statutory training provisions are among the strongest in the nation (I believe they even mention a specific number of hours).

Recommendation C.2. I do not agree with this recommendation and could not support it. It does not take into account the local offices that would not be voted upon with such practices because voters would then not be directed (or go) to their correct polling place to cast a ballot.

Recommendation C3. Why can't the best practice be to send the voter to the correct precinct—if it's in the same building (and probably the same room) as suggested in this recommendation? Why disenfranchise a voter from voting on a local race? This recommendation doesn't make a lot of sense.

Recommendation D2. Why are they suggesting that completing eligibility evaluations are more critical in presidential elections? I am sure some at the state level would argue that their gubernatorial elections are just as important (if not more).

Recommendation H. What do they mean by "national quality organizations"? Can they provide some examples?

On Table 3 Categorization of States. Can they check on Illinois? I'm not sure the law is that clear. In November 2004 Cook County did it one way (counted out-of-precinct) and DuPage County did it another (required in-precinct in order to be counted). You can check with the DuPage County Director of Elections, Robert Saar, (630-4075600) to find out what legal grounds he used.

Table 5 has no states italicized. Is that correct? (because you mention "some states in italics...")

Data differences page. Please explain the 0/8022 discrepancy under North Carolina "differences" (since you indicate the info was not updated from the state).

Attachment 2 --- Data. Where did you get the information on Missouri? Missouri enacted provisional voting in 2002 and I am fairly sure it was in effect for the November 2002 election (which would have been pre-HAVA).

Hope this helps!

Paul DeGregorio
Chairman
US Election Assistance Commission
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Suite 1100
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1-866-747-1471 toll-free
202-566-3100
202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:37 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: signed contract amendment

Bottom line-

Please make certain you have the signed no-cost extension documents.

Tamar is likely to have a copy or to know where you can get it.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:34 AM -----

"John Weingart"
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02/10/2006 03:55 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc
Subject signed contract amendment

Karen - I now have the no-cost extension signed by the appropriate Rutgers folk and am mailing it to your attention. Would you like a faxed, signed copy too?

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:35 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: No Cost Extensions (with extensions)

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:33 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
01/13/2006 01:22 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Lucy Baruch" <baruch@rci.rutgers.edu>
Subject No Cost Extensions (with extensions)

Attachment 1-EAC Eagleton Institute budget for no-cost extension-1.xls Attachment 2-EAC Eagleton Institute Budget 3-22-05-1.xls

Karen - I am attaching a spreadsheet providing the information you have requested (Attachment 1), but I want to highlight a few points which may not be immediately self-evident.

First, the original budget (Attachment 2) we submitted to the EAC, dated March 22^nd , did not itemize personnel expenses by each person. In addition, when we actually began work two months after submitting that budget, we decided to reallocate more time to people within Eagleton and hire fewer outside hourlies.

Second, in the figures I sent you in late December we tried to account for all the expenses and projections but overlooked a few things including neglecting to include the honoraria for our peer review team. Hence, the figures we're now sending are different than what I sent in December.

Lastly, we originally discussed a no-cost extension through February, but since we don't yet have the EAC comments on our draft Provisional Voting material nor an estimate of when they are likely to be ready, I think it is prudent to extend the no-cost extension through March 31st . We would still like to conclude by the end of February, but if you can approve the extension for another month we could avoid going through this process again if everything is not complete six weeks from now.

It is my understanding that Rutgers will soon be sending our December invoice. At this time, I would also like to request that we combine January and February an invoice the EAC once for that time period.

As you can see, we are currently projecting an ending balance of approximately $10,000. If additional expenses are incurred beyond what is currently projected, we're confident they will not exceed the original budget of $560,002.

Thanks and I look forward to hearing from you.

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Eagleton Institute of Politics, Rutgers The State University of New Jersey
US Election Assistance Commission Project Budget (original 3/22/05; revised 1/13/06 for no-cost extension)

Description	Original Budget	Cumulative Expenses through Dec 2005 (actual and committed)	Post Jan 1 Projected Expenses	Projected Balance	Post Jan 1 Projected Hours	Post Jan 1 Hourly Rate
Eagleton Faculty and Staff (salaried and hourly)		**84,263.20**	**15,250.00**			
Ruth Mandel, Director and Professor		5,682.86	3,500.00		43	81.98
John Weingart, Associate Director		7,347.00	3,500.00		72	48.74
Ingrid Reed, Director of Eagleton NJ Project		19,500.00	2,500.00		63	40.00
Don Linky, Director of Electronic Democracy Project		8,100.00	1,750.00		47	37.50
Tim Vercellotti, Assistant Research Professor		9,384.00	2,500.00		64	38.96
April Rapp, Research Project Coordinator		12,844.55	0.00		0	
Lauren Vincelli, Project/Bus. Administrator		10,800.90	0.00		0	
Michele Brody, Administrative Assistant		0.00	500.00		23	21.97
Lisa Velasquez, Administrative Assistant		6,503.89	0.00		0	
Linda Phillips, Unit Computing Specialist		2,100.00	250.00		10	25.07
Joanne Pfeiffer, Secretary		2,000.00	750.00		38	19.77
Rutgers Graduate Students (hourly)		**15,531.60**	**3,500.00**			
Dave Andersen		6,060.00	1,500.00		125	12.00
Nadia Brown		906.00	0.00		0	
Jilliam Curtis		1,002.00	0.00		0	
Johanna Dobrich		1,635.60	1,000.00		83	12.00
Dave Harris		5,928.00	1,000.00		83	12.00
Fringe (rates vary by employee type)		**21,332.56**	**4,567.50**			
Subtotal Personnel Expenses	**110,695**	**121,127.36**	**23,317.50**	**(33,749.86)**		
Honoraria						
Honoraria for Peer Review Group	**10,000**	**0.00**	**10,000.00**	**0.00**		
Public Hearings	**81,120**	**948.74**	**0.00**	**80,171.26**		
Public Hearings	75,000	0.00	0.00			
Transportation	6,120	948.74	0.00			
Briefings/Meetings						
Train, ground, lodging, meals	**5,200**	**1,302.82**	**1,750.00**	**2,147.18**		
General Operations	**20,000**	**20,029.59**	**1,750.00**	**(1,779.59)**		
Office supplies, software, telephone, copying, postage	10,000	9,003.11	1,750.00			
Desktop computers, laptop, printer	10,000	11,026.48	0.00			
Subcontracts						
Project Director-Tom O'Neill	**79,500**	**81,750.00**	**18,000.00**	**(20,250.00)**	192	93.75
Ohio State University (OSU)-Legal Analysis*	**84,744**	**84,222.35**	**23,692.66**	**(23,171.01)**		
OSU Personnel (with fringe)	50,735	55,724.22	14,001.15			
Ned Foley, Professor		30,514.24	8,687.03		72	120.65
Dan Tokaji, Professor		3,313.65	1,408.82		16	88.05
Laura Williams, Project Coordinator		7,846.00	2,320.00		80	29.00
Sara Sampson, Research Coordinator		5,229.14	705.30		20	35.27
Research Assistants		8,821.19	880.00		100	8.80
OSU Travel	5,950	611.80	1,846.78			
OSU Overhead	28,059	27,886.33	7,844.73			
Subtotal Non Personnel Expenses	**280,564**	**188,253.50**	**55,192.66**	**37,117.84**		
Subtotal Direct Costs	**391,259**	**309,380.86**	**78,510.16**	**3,367.98**		
Fac&Admin (overhead) on Modified Total Direct Cost	153,743	117,790.20	19,881.45	16,071.68		
TOTAL Project Budget	**545,002**	**427,171.06**	**98,391.61**	**19,439.66**		
Optional Surveys						
State Election Officials	15,000	24,269.04	0.00	(9,269.04)		
Total Project Budget with Optional Survey	**560,002**	**451,440.10**	**98,391.61**	**10,170.62**		

*Ohio State University figures are included in the "cumulative expenses through Dec 2005" even though Rutgers has not yet received the cumulative invoices.

Eagleton Institute of Politics, Rutgers The State University of New Jersey
US Election Assistance Commission Project Budget (3/22/05)

Description	Budget	
Personnel		
Eagleton faculty/senior staff	35,000	Mandel, Weingart, Reed, Linky (various percentages)
Eagleton staff: logistics/administrative/clerical	15,000	(various percentages)
Fringe (32.5%)	16,250	
	66,250	
Hourly Personnel		
Research Coordinator	21,250	1250 hours at $17 per hour
Logistics/Admin Coordinator	12,325	725 hours at $17 per hour
Research assistants	7,200	300 hours at $12 per hour for two researchers
Fringe on Hourly (9%)	3,670	
	44,445	
Subtotal Personnel Expenses	**$110,695**	
Honoraria		
Honoraria for Peer Review Group	**10,000**	10 at $1,000
Public Hearings (3 in 3 cities)		
Public Hearings	75,000	3 hearings at $25K per EAC figures
2 Hearings in DC- train, ground, lodging, meals*	3,480	attended by 3 staff
1 Hearings in St. Louis- air, ground, lodging, meals**	2,640	attended by 3 staff
	81,120	
Briefings/Meetings with EAC		
Train, ground, lodging, meals***	**5,200**	5 briefings in DC, attended by 2 staff
General Operations		
Office supplies, software, telephone, copying, postage	10,000	
Desktop computers, laptop, printer	10,000	
	20,000	
Subcontract		
Project Director- O'Neill	**79,500**	80% time April – Aug., 60% Sept. – Oct.
Ohio State University- Legal Analysis	**84,744**	Partner institution, Moritz College of Law, OSU
Subtotal Non Personnel Expenses	**$280,564**	
Subtotal All Direct Cost	**391,259**	
Modified Total Direct Cost $277,015****		
F&A on Modified Total Direct Cost (55.5%)	153,743	Rutgers University federally approved rate.
TOTAL Project Budget	**$545,002**	
Optional Surveys		
State Election Officials	15,000	Eagleton
Young Voters	25,000	Eagleton
Provisional Voting, 1st state	116,000	OSU Political Science
Provisional Voting, 1st additional state	75,000	OSU Political Science
Provisional Voting, 2nd additional state	60,000	OSU Political Science
Total Optional Surveys (no F&A)	**$291,000**	

* Travel and lodging to two hearings in DC includes $260 for train fare to DC, $200 for hotel/lodging, and $60 per day for two days for meals= $580 per person per trip for three people.

** Travel and lodging to one hearing in St. Louis includes $500 airfare to St. Louis, 2 nights hotel/lodging at $100, and $60 per day for three days for meals= $880 per person for three people.

*** Travel and lodging to five Briefings/Meetings with EAC includes $260 for train fare to DC, $200 for hotel/lodging, and $60 for meals= $520 per person per trip for two people.

**** Modified total direct cost is equivalent to total direct cost except for two items - F&A included only on first $25K of subcontract with Project Director ($79,500) and first $25K of subcontract with OSU ($84,744).

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:34 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Emailing: 12-8-05Eagleton Memo

Karen Lynn-Dyson
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tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:32 AM -----

Nicole Mortellito/CONTRACTOR/EAC/GOV
01/05/2006 04:15 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
Subject Emailing: 12-8-05Eagleton Memo

Here is the updated Eagleton Memo.

- 12-8-05Eagleton Memo.doc

Your files are attached and ready to send with this message.
Regards,

Nicole K. Mortellito
Special Projects
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

December 9, 2005

MEMORANDUM FOR THE RECORD

On May 24, 2005 the U.S. Election Assistance Commission awarded an eight month contract (December 30, 2005) in the amount of $560,002.00 to the Eagleton Institute of Politics (Rutgers, The State University of New Jersey) to provide research assistance to support development of guidelines on the topics of provisional voting and voter identification procedures.

On November 15, 2005, John Weingart, Associate Director of the Eagleton Institute of Politics, requested via e-mail, a no–cost extension on this contract (E4014127). Mr. Weingart has requested an extension to complete the work of this contract to February 28, 2006.

In subsequent correspondence, Mr. Weingart notes the following as the reason for the request:

"The original work schedule called for EAC to publish in mid-October, voluntary guidance and/or recommended best practices for provisional voting, based on Eagleton's research. In making that time estimate, we did not provide sufficient time for the EAC to review and consider the draft reports that would form the basis for that publication..... The additional time required to complete the work on provisional voting has delayed the completion of our analysis of Voter Identification issues. The draft report of that topic will be submitted to the EAC in mid-January".

He further notes:

"If EAC does not object, funds originally allocated for the hearings would be available for transfer to support the additional staff and consultant time necessary to complete the work..."The total project budget is $560,002. As of October 31st, the EAC has been invoiced for $259,081.79; the balance remaining is $300,920.21. We anticipate that the project will be complete and the balance of funds fully expended by February 28, 2006. The final invoice for the contract will be submitted to the EAC within 75 days of the close of the project".

Karen Lynn-Dyson, the EAC's Contracting Officer Representative assigned to this contract has reviewed this request, the rationale and authority for it (FAR 43.103(a)(3)) and finds it to be appropriate. To-date the Eagleton Institute has consistently met its deadlines for major project deliverables and stayed within the project budget. To grant the Eagleton Institute a two month extension on this contract in order to obtain the necessary feedback on major documents it has produced will be within the best interests of the Election Assistance Commission, and thus, the federal government.

EAC's Contracting Officer Representative finds that to grant the Eagleton Institute a no-cost extension for the modification of its contract with the EAC is within the scope of the original agreement and is recommending that this modification to the contract be made.

Signed

Karen Lynn-Dyson
Contracting Officer Representative
U.S. Election Assistance Commission

Gracia M. Hillman
Chair
U.S. Election Assistance Commission

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:33 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: No Cost Extension Request

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:32 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
12/22/2005 05:26 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc "Tom O'Neill" [redacted]
Subject Re: No Cost Extension Request

Karen - Our request for a no-cost, reallocation of resources is based on (a) the fact that our personnel costs have already been higher than we anticipated and (b) the reality that keeping the project operating for at least nine months, instead of seven as planned, will require the participants to devote more time than anticipated. While we are not producing more product than originally promised, the time involved in our work continues to increase. Both Provisional Voting and Voter ID have proved to be very dynamic topics requiring us to continually monitor developments and update our data, analysis and evolving work products as we learn of new or revised information. As a result, despite the extension of the schedule, the staff and consultants on this project have had no "down" time. We anticipate this research, monitoring and revising to continue for the months added to the project, necessitating significantly more hours by all members of the project team than anticipated.

Our request asks for changes to three line items which I will address below on the assumption that the EAC response to our already-submitted Provisional Voting draft and to-be-submitted Voter ID draft will be sufficiently timely to enable us to complete our work on both topics by the end of February.

1. Eagleton Institute of Politics personnel: We originally budgeted $110,695 ($15,813 average per month) for Eagleton faculty, staff and graduate student assistants for the seven-month project from May 24, 2005-December 31, 2005. Our actual costs have been approximately $14,500 more than that. In addition, we are anticipating needing another $21,000 for personnel costs in January and February, calculated on the basis of 2/3 of the original monthly estimate. Therefore, we are asking to raise this line item from $110,695 to approximately $146,000.

2. Consultant Services: We originally budgeted $79,50 ($11,357 average per month) for consultant services which we have used to engage Tom O'Neill as the project manager. We anticipate no additional cost for the

original contract period of May 24, 2005-December 31, 2005, but do anticipate needing his services during January and February at a slightly reduced rate of $10,125 per month or $20,250 total additional. Therefore, we are asking to raise this line item from $79,500 to $99,750.

3. Moritz School of Law: We originally budgeted $84,744 ($12,106 average per month) for staff and overhead for the May 24, 2005-December 31, 2005 period. We anticipate needing an additional $23,171 ($11,585 average per month) to support their time on this project in January and February. Therefore, we are asking to raise this line item from $84,744 to $107,915.

With these revisions, approximately $22,000 of the EAC contract award to Eagleton would remain not yet allocated, primarily because the cost for the public hearings would have incurred Rutgers University overhead whereas the addtional expenditures for consultants and the subcontract with Moritz do not.

I hope this provides you the information you need. While Rutgers is shutting down until January 3rd, I will be checking email at least every day or two.

-- John Weingart, Associate Director
   Eagleton Institute of Politics
   (732)932-9384, x.290

klynndyson@eac.gov wrote:

>
> John-
>
> I just had a more detailed conversation with our Deputy General
> Counsel about Eagleton's no-cost extension.
>
> He indicates that we need a bit more information that will accompany
> the material we will send to the Commissioners for a vote (hopefully
> next week)
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> We need to know the number of labor hours, the labor costs and a brief
> description of the tasks to be performed by each of the staff who will
> be working on the EAC contract until its completion.
>
> Since we have eliminated the public hearing (a major contract
> deliverable) it is unclear why staff labor hours and costs will
> continue at the same level and rate.
>
> As always, thanks for your patience and prompt response.
>
>
>
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:32 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: No Cost Extension Request

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:31 AM -----

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<john.weingart@rutgers.edu>
12/22/2005 05:26 PM
Please respond to
john.weingart@rutgers.edu

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Eagleton Institute of Politics
(732)932-9384, x.290

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>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:32 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Request for No-Cost Extension-corrected

This e-mail should be a part of the no -cost extension file and/or the financial file you create for the Eagleton contract.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:29 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
12/16/2005 01:25 PM
Please respond to
john.weingart@rutgers.edu

To klynndyson@eac.gov
cc
Subject Re: Request for No-Cost Extension-corrected

Karen - At this time, we anticipate reallocating funds primarily from the public hearings line item and spending approximately $35,500 more than originally budgeted on personnel, $23,250 more on the subcontract with Ohio State and $20,250 more on consultants. There are other additional variances but they are not significant (e.g. less on honoraria, less on travel, and more on general operations such as phone expenses). Let me know if you need additional detail or information.

Thanks, John

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

klynndyson@eac.gov wrote:

\>
\> John-
\>
\>
\> Quick question-
\>
\> How much money do you anticipate will be re-allocated from the
\> original line items outlined in the contract to other project costs?
\>

> Thanks
>
> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
>
>
>
> *"John Weingart" <john.weingart@rutgers.edu>*
>
> 11/30/2005 05:05 PM
> Please respond to
> john.weingart@rutgers.edu
>
>
>
> To
>   "Karen Lynn-Dyson" <klynndyson@eac.gov>
> cc
>   "Tom O'Neill" [redacted]
> Subject
>   Request for No-Cost Extension-corrected
>
>
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> --
> -- John Weingart, Associate Director
>   Eagleton Institute of Politics
>   (732)932-9384, x.290
>
>
>

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:30 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: No Cost Paperwork

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:28 AM -----

Tamar Nedzar/EAC/GOV
12/12/2005 06:08 PM

To Gavin S. Gilmour/EAC/GOV@EAC
cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
Subject No Cost Paperwork

Hi Gavin,

This is the document I prepared for the no-cost extension.

Thank you,
Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov

TNedzar@eac.gov sf30.pdf

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE		PAGE OF PAGES	
2. AMENDMENT/MODIFICAITON NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicble)
6. ISSUED BY CODE		7. ADMINISTERED BY (If other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

(X)

9A. AMENDMENT OF SOLICIATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO.

10B. DATED (SEE ITEM 11)

CODE

FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a)By completing items 8 and 15, and returning ______ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPIRATION DATA (If required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☐ is required to sign this document and return ______ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED

NSN 7540-01-152-8070
Previous edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA FAR (48 CFR) 53.243

INSTRUCTIONS

Instructions for items other than those that are self-explanatory, are as follows:

(a) Item 1 (Contract ID Code). Insert the contract type identification code that appears in the title block of the contract being modified.

(b) Item 3 (Effective date).

(1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.

(2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.

(3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.

(4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(5) For a modification confirming the contacting officer's determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.

(c) Item 6 (Issued By). Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.

(d) Item 8 (Name and Address of Contractor). For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.

(e) Item 9, (Amendment of Solicitation No. - Dated), and 10, (Modification of Contract/Order No. - Dated). Check the appropriate box and in the corresponding blanks insert the number and date of the original solicitation, contract, or order.

(f) Item 12 (Accounting and Appropriation Data). When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries.

(1) Accounting classification \
Net increase $

(2) Accounting classification \
Net decrease $

NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words "See continuation sheet".

(g) Item 13. Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103.)

(h) Item 14 (Description of Amendment/Modification).

(1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document

(2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries:

(i) Total contract price increased by $

(ii) Total contract price decreased by $

(iii) Total contract price unchanged.

(3) State reason for modification.

(4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.

(5) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to --

(i) A reference to the letter determination; and

(ii) A statement of the net amount determined to be due in settlement of the contract.

(6) Include subject matter or short title of solicitation/contract where feasible.

(i) Item 16B. The contracting officer's signature is not required on solicitation amendments. The contracting offier's signature is normally affixed last on supplemental agreements.

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:29 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Request for No-Cost Extension-corrected

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:27 AM -----

"John Weingart"
<john.weingart@rutgers.edu>
11/30/2005 05:05 PM
Please respond to
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc "Tom O'Neill" [redacted]
Subject Request for No-Cost Extension-corrected

Extension Justification.doc Karen - There were two typos on the copy I just sent. Please use the attached instead. To minimize confusion, I dated this document December 1st (the first one says November 30). Thanks, John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

EAGLETON INSTITUTE OF POLITICS

Request to the U.S. Election Assistance Commission for a No-Cost Extension and Reallocation of Funds

December 1, 2005

Why we need a no -cost extension

The original work schedule called for EAC to publish in mid-October voluntary guidance and/or recommended best practices for provisional voting based on our research. In making that time estimate, we did not provide sufficient time for the EAC to review and consider the draft reports that would form the basis for that publication. The draft was complete in August, but the EAC's schedule did not permit us to brief the commissioners and staff until early September. We did not receive EAC comments until October, making it impossible to complete the work on the original schedule. Taking account of those comments and guidance from EAC required several weeks. The EAC did not receive our final draft report and recommendations for best practices until late November. We are now awaiting the EAC's comments on that final draft, which we have been told to expect in January.

The additional time required to complete the work on provisional voting has delayed the completion of our analysis of Voter Identification issues. The draft report on that topic will be submitted to the EAC in mid January.

Because the EAC has decided to issue recommendations for best practices on these topics, rather than voluntary guidance, we will finish the work within two months of the original completion date since the adoption process will be shorter. Note that meeting this schedule is dependent on the time needed by the EAC to review our work.

This extension will entail additional personnel time but, since no public hearings on "best practices" are required, if the EAC does not object, funds originally allocated for the hearings would be available for transfer to support the additional staff and consultant time necessary to complete the work.

When will work be completed and funds fully expended?

As shown on the attached schedule, work on this contract will be completed in three phases. The EAC will receive our final report and recommendations for best practices in provisional voting during the week of January 23, 2006 (assuming that we receive the EAC's comments on the draft report submitted on November 28 by January 9).

We will submit our draft report, alternative approaches, and compendium of statutes, regulations, and litigation on Voter Identification Issues during the week of January 16, 2006. If the EAC is able to return comments to us no later than the week of January 30, we will have submit the final report and recommendations for best practices on Voter Identification to the EAC during the week of February 13.

The total project budget is $560,002. As of October 31st, the EAC has been invoiced for $259,081.79; the balance remaining is $300,920.21. We anticipate that the project will be complete and the balance of funds fully expended by February 28, 2006. The final invoice for the contract will be submitted to the EAC within 75 days of the close of the project.

REVISED SCHEDULE FOR
November 2005 – February 2006
November 10, 2005
Assumes no guidance document, only analysis and recommended best practices

DATE	Project Management	Provisional Voting	Voter ID
Week of 10/31		Review draft report to EAC (Team) Submit comments on report (Team)	Voter ID Research to TV
Week of 11/7	Status reports to JD for October tasks (all)	Redraft report (TON) Review and approve report (Team) Final draft report (TON)	Research continues (TV)
Week of 11/14	Submit monthly progress report (JD)	Submit report to Project Team for comments (TON)	Research continues (TV)

Week of 11/21		Project team comments received Submit report to EAC for review and to PRG for information (TON, JW)	Complete data collection for Voter ID analysis. (TV)
Week of 11/28		EAC review	Draft report on Voter ID analysis (TV)
Week of 12/5	Status reports to JD for November tasks (all)	EAC review	Internal review (PT)
Week of 12/12	Submit monthly progress report (JD)	EAC review	Revise draft (TV) Draft alternatives (TON) Review and comment on alternatives (PT)
Week of 12/19		EAC review	Complete draft report and alternatives (TV, TON)
Week of 12/26		EAC review	Review draft report and alternatives (PT)

Week of 1/2/06	Status reports to JD for December tasks (all)	EAC review	Report and alternatives to PRG for review
Week of 1/9/06		Receive comments from EAC and revise report as needed	PRG meets and comments Revise (TV & TON)
Week of 1/16/06	Submit monthly progress report (JD)	Project team reviews and approves revised report	Submit draft report, alternatives and compendium to EAC EAC reviews
Week of 1/23/06		Finalize analysis and best practices and submit to EAC for publication and further action as	EAC review continues
Week of 1/30/06		[redacted]	Comments from EAC Revise (TV & TON)

Week of 2/6/06	Status reports to JD for January tasks (all)		Review and approve revised report and recommendations for best practices (PT)
Week of 2/13/06	Submit monthly progress report (JD)		Submit report and best practices to EAC for publication and further action as appropriate
Week of 2/20/06	FINAL status reports to JD for all tasks (all) Final fiscal report/invoice to EAC 75 days later PROJECT ENDS		[redacted]

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:29 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Final Best Practices Document

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:27 AM -----

"Johanna Dobrich"
<jdobrich@eden.rutgers.edu>

11/28/2005 11:17 AM

To klynndyson@eac.gov
cc
Subject Final Best Practices Document

Best Practices FINAL 11.23.05.doc Final Best Practices__attachment Two.xls

Dear Ms. Karen Lynn-Dyson:

Attached please find the final draft 'Best Practices to Improve Provisional Voting Report' completed by the Eagleton Institute of Politics, and Mortiz College of Law.

Please note that our report has two attachments, the first of which is appended directly within the text of the report, and the second of which is a separate excel document. In addition to this electronic submission I will be sending you a hard copy, via FedEx of these materials later today.

Please let me know if you have any difficulty opening the files.

Sincerely,

Johanna Dobrich

--
Johanna Dobrich
Eagleton Institute of Politics
Rutgers University
jdobrich@eden.rutgers.edu

DRAFT

Deliberative Process
Privilege

Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Provisional Voting
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252

November 23, 2005

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Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

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Report to the
U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

CONTENTS

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Background of the Research

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning provisional voting, a sample survey of local election officials, and a statistical analysis of provisional voting in the 2004 election. Also consulted as a basis for these recommendations were other studies, notably the EAC's Election Day Survey.[1]

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.[3] The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that the ballot must be cast in order to be counted.[4]

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, include first-time voters who cannot provide identification, as required under HAVA, and voters who were

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[1] Appendix 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures and describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

[3] The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions. " See www.electioncenter.org

[4] The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell, 387 F.3d565* (6th Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

challenged at the poll.[5] HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. HAVA also requires election administrators to notify individuals of their opportunity to cast a provisional ballot.

Provisional Ballots in the 2004 Election

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.[6]

These totals obscure the tremendous variation in provisional voting among the states. HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Six states accounted for two-thirds of all the provisional ballots cast.[7] State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000, from a high of 7% in Alaska's to Vermont's .006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted ballots at more than twice that rate: 44%. (Or, as the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without."[8])

The wide variations in the use of provisional ballots argue for the promulgation of best practices that states can use to determine how to make procedures clearer to both officials and voters could improve the implementation of provisional voting across the country.

One important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.[9]

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[5] The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See http://wired.com/news/evote/0,2645,63298,00.html . (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004 .)

[6] These figures differ slightly from those in the Election Day Survey. Data used for this study include complete voting data for New Mexico, for which the Election Day Survey had only partial data, and vote totals for Pennsylvania, which was not included in the provisional voting analysis in the Election Day Survey. See the appendix to this report for a full explanation of the differences in data between this research and the Election Day Survey.

[7] California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

[8] Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

[9] See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

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- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.[10] That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC should consider providing the "new" states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Current understanding of the provisional voting processes in use in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such

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[10] Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's 6-day time frame for processing the provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots."* (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots – as measured by intrastate consistency in administration— will be harder and take longer to achieve.[11]

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2. "Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted. Some states merely require a voter's signature, some match signatures, some require identity documents, others require an affidavit, and a few require photo identification. [12]
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.

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- Voter registration databases provided information that reduced the number of provisional ballots counted.[13] In states using provisional voting for the first time, states with

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[11] Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, "no state gave the voter the right to find out the status of their ballot after the election. " Now all offer that opportunity. See Bali and Silver, "The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000," manuscript, Department of Political Science, Michigan State University. Resisting HAVA's mandates through foot-dragging lacks any legitimate foundation in law or policy.

[12] See Table 2 in Appendix 2 for information on the verification method used in each state.

[13] The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

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registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.[14]
    - In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
    - If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.[15]

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.[16] Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."[17]

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Election Line reported that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.

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[14] The Election Day Survey concluded that : "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

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[15] This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

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[16] For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

[17] Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.16. The report observed that, ". . .different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, high mobility, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts were the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

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Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.[18]¶
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The Election Day Study found that jurisdictions with lower education and income tend to report more inactive voter registrations, lower voting turnout, higher number of provisional ballots case, lower average number of poll workers per polling place and greater percentage of inadequately staffed polling places. These differences in demographics and resources produce different experiences with provisional voting.[19]¶

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Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

Not knowing the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

Estimates of Votes Lost In 2000 Presidential Election

Votes Lost (Millions)	*Cause*
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

Table 1 Cal Tech – MIT Voting Technology Project Estimates
4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)'. Whatever the precise figure, it ... [8]

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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states[20] came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.[21]

Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

The issue of counting provisional ballots cast in the wrong precinct was addressed by Colorado, Arkansas, and North Dakota.

Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless.

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* Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems after each election when it asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

[20] Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

[21] The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the *entire department's employees were mobilized to process provisional ballots*." The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny." See Appendix 7, GAO, "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.

- Second –and significantly– the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.

- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

Need for Promulgation of Best Practices

Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

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Self-evaluation of Provisional Voting –4 Key Questions

The first recommendation is not for a specific procedure, but rather for a way of thinking about provisional voting. As legislators and election officials in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?

2. Is the system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and with litigation looming?

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3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

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If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

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Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention, and we offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

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The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result– well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."[22]

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

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[22] The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.[23] Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.

- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from be penalized by ministerial errors at the polling place.[24]

- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. [25] Recent legislation in Arizona indicates that the EAC's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot. [26]

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency." [27]

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[23] See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

[24] See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

[25] *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

[26] *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

[27] Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

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2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.[28]

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3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

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B. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.[29] After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." [30] Such statutory direction could help other states ensure uniform instruction of poll workers.

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2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . .to photocopy official provisional ballots." [31] At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the

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[28] The Century Foundation, op. cit.

[29] 8 Colo. Code Regs. § 1505-1, Rule 7.1.

[30] 2005 N.M. Laws 270 page no. 4-5.

[31] Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

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number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.[32]

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.[33]

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C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."[34] Nonetheless, the *Panio v. Sutherland*[35] decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

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1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted

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[32] Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j.Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

[33] 10 Ill. Comp. Stat. Ann. 5/18A-10(b). Indiana requires that the precinct election board give the ballots to the Inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4.

[34] The Century Foundation, op. cit.

[35] 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

[37] In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c) (1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election);Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.[37]

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2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct. [38] The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report.

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3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location. [39]

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.[40]

Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.

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[38] See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

[39] Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

[40] 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

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RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
RRD	(Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections

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2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

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E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

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Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.

2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.

3. State laws or regulation should require the evaluation process for provisional ballots to be public.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what constitutes a successful provisional voting system is difficult. As noted earlier, the most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

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Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations to evaluate the provisional ballot process within the broader context of the electoral system. Pending such a review, the EAC can recommend that states take the following actions.

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1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.

2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
   - -- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
   - -- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
   - -- Measures of variance among jurisdictions.
   - -- Number of poll workers trained in administration of provisional voting by polling place
   - -- Number of jurisdictions posting information on provisional voting in the polling place
   - -- Time required to evaluate ballots by jurisdiction

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Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

Conclusion – Research-based, continuing improvements for provisional voting are needed

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The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

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To answer those questions, the Eagleton-Moritz team undertook the following research efforts:

1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.
3. Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approached to voter identification
4. Collection and review of the provisional voting statutes and regulations in all 50 states.
5. Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

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Our research-based recommendations provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states moved forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

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ATTACHMENT 1 – Characteristics of the Provisional Voting Process Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The categories analyzed here are:

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1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

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We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

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New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting[41] and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

Comment [o2]: It would be useful here to insert a table showing our classification as old or new.

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We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as "old" states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Comment [o3]: Under this criterion, how did Florida become an "old" state?

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline's map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct's list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter's name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island's first use of provisional voting was in 2004 and, therefore, classified the state as "new" to the system of provisional balloting.

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[41] This study can be found at: http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf.

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Table 1
CATEGORIZATION OF STATES – Old vs New

Old States	**New States**	**HAVA Exempt or NA**
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
26	**18**	**7**

Statewide List of Registered Voters

The Electionline preview of the 2004 Election[42] was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

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[42] "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf

Table 2 CATEGORIZATION OF STATES -- Statewide Registration Database			
Had Database 2004	**No Database A-N**	**No Database N-W**	**HAVA Exempt or NA**
Alaska	Alabama	Ohio	Iowa
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Idaho	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
16	27		8

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Comment [o4]:

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election[2]. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

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Table 3
CATEGORIZATION OF STATES – Counting Out-Of-Precinct Ballots

Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

Voter Identification

We relied on Electionline studies, including the Voter Identification study[43] and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.[44] The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

Table 4
CATEGORIZATION OF STATES – Forms of Identification Required

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[43] This study can be found at: http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf

[44] In 2004, ElelctionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

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States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Give Name	**Sign Name**	**Match Signature**	**Provide ID**	**Photo ID**
Maine	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
New Hampshire	*Idaho*	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
Wisconsin	Michigan	West Virginia	Georgia	
Wyoming	Minnesota		Kentucky	
	Mississippi		Missouri	
	Nebraska		Montana	
	New Mexico		*North Dakota*	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
9	14	8	15	5

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Comment [o5]: Again, this would work better as a table.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

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Table 5
CATEGORIZATION OF STATES – Ballot Evaluation Methods
States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

Signature Match	Data Match	Affidavit	Return with ID	NA
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina*
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

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* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

Table 6
Updated information by State

Received Updated Data	**Did Not Receive Updated Data**
California	Alabama
District of Columbia	Alaska[45]
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland[46]	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska[47]	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
26 States	**25 States**

---

[45] Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.
[46] Maryland reported provisional ballots that were counted per county, but not number cast.
[47] Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

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Data Differences

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	53,698/26,092	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

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Attachment 1 Characteristics of the Provisional Voting Process, Classification of the States¶
Attachment 2 State Provisional Voting Systems, Comparative Tables¶
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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

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* Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems after each election when it asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

Deliberative Process Privilege

ATTACHMENT 2 -- Data

Table 1 -- Provisional Voting Basic Statistics

States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Alabama	Affidavit	0.10	28.00
Alaska	PV	7.20	97.00
Arizona	PV	3.66	73.00
Arkansas	PV	0.35	48.00
California	PV	3.96	74.00
Colorado	LPV	1.84	76.00
Connecticut	None	0.03	32.00
Delaware	None	0.01	6.00
District of Columbia	PV	3.51	71.00
Florida	PV	0.13	36.00
Georgia	None	0.12	30.00
Hawaii	None	0.01	7.00
Idaho	EDR	EDR	EDR
Illinois	None	0.42	51.00
Indiana	None	0.02	15.00
Iowa	PV	0.53	52.00
Kansas	PV	2.68	70.00
Kentucky	Affidavit	0.01	15.00
Louisiana	None	0.12	40.00
Maine	EDR	EDR	EDR
Maryland	PV	1.33	65.00
Massachusetts	None	0.08	23.00
Michigan	Affidavit	0.07	58.00
Minnesota	EDR	EDR	EDR
Mississippi	Affidavit		
Missouri	None	0.12	40.00
Montana	None	0.08	55.00
Nebraska	LPV	1.71	78.00
Nevada	None	0.29	40.00
New Hampshire	EDR	EDR	EDR
New Jersey	LPV	1.96	55.26
New Mexico	PV	1.16	57.00
New York	PV	3.27	40.30
North Carolina	PV	1.21	55.00
North Dakota	NR	NR	NR
Ohio	LPV	2.20	78.00
Oklahoma	None	0.01	8.00
Oregon	PV	0.39	85.00
Pennsylvania	None	0.45	49.00
Rhode Island	None	0.23	46.00
South Carolina	PV	0.20	65.00
South Dakota	None	0.02	12.00
Tennessee	None	0.14	38.00
Texas	Affidavit	0.10	21.00
Utah	None	2.00	70.00
Vermont	None	0.01	37.00
Virginia	PV	0.02	17.00
Washington	PV	2.44	80.00
West Virgina	PV	1.11	63.00

ATTACHMENT 2 -- Data

Wisconsin	EDR	0.00	32.00
States	**PV Status Pre-HAVA**	**PV % of the Vote**	**PV % of the vote Counted**
Wyoming	EDR	0.01	25.00

Table 2 -- Characteristics of State Provisional Voting Systems

States	Was there a Statewide DB in 2004?	Are Outside Precincts Counted in Presidental Elections?	Verification Method	What is the time line for counting PV ballots?	Is this Review process open?
Alabama	No	No	Check address & registration	7 days	unclear
Alaska	Yes	Yes	Signature	15 days	limited
Arizona	Yes	No	Check address & registration	10 days	unclear
Arkansas	No	Yes	Check address & registration	15 days	Unclear
California	No	Yes	Signature	28 days	yes
Colorado	No	Yes	Check address & registration	12 days	limited
Connecticut	Yes	No	Affidavit	6 days	unclear
Delaware	Yes	Yes	Affidavit	Until Completion	limited
D.C.	Yes	No	Check address & registration	*	limited
Florida	No	No	Signature	11 days	yes
Georgia	Yes	Yes	Affidavit	7 days	unclear
Hawaii	Yes	Yes	Affidavit	6 days	limited
Idaho	No	EDR	EDR	*	unclear
Illinois	No	Yes	Affidavit	14 days	unclear
Indiana	No	No	Bring ID later	13 days	yes
Iowa	No	No	Bring ID later	2 days	unclear
Kansas	No	Yes	Bring ID later	*	limited
Kentucky	Yes	No	Affidavit	3 days	unclear
Louisiana	Yes	Yes	DOB and Address	4 days	yes
Maine	No	EDR	EDR	*	unclear
Maryland	No	Yes	Bring ID later	*	unclear
Massachusetts	Yes	No	Affidavit	4 days	unclear
Michigan	Yes	No	Bring ID later	14 days	unclear
Minnesota	?	EDR	EDR	14 days	Unclear
Mississippi	No	No	Affidavit	*	yes
Missouri	No	No	Check address & registration	14 days	limited
Montana	No	No	Bring ID later	*	unclear
Nebraska	No	No	Affidavit	7 days	limited
Nevada	No	No	Affidavit	7 days	unclear
New Hampshire	No	EDR	EDR	*	unclear
New Jersey	No	No	Bring ID later	28 days	yes
New Mexico	Yes	Yes	Bring ID later	10 days	unclear
New York	No	No	Affidavit	10 days	yes
North Carolina	No	Yes	Varies	7 days	yes
North Dakota	NR	NR	NR	*	unclear
Ohio	No	No	Check address & registration	*	unclear
Oklahoma	Yes	No	Check address & registration	3 days	limited
Oregon	No	Yes	Signature	*	limited
Pennsylvania	No	Yes	Check address & registration	*	unclear
Rhode Island	No	Yes	Check address & registration	*	yes
South Carolina	Yes	No	Check address & registration	4 days	unclear
South Dakota	Yes	No	Affidavit	3 days	unclear
Tennessee	No	No	Affidavit	48 hours	unclear
Texas	No	No	Bring ID later	7 days	unclear
Utah	No	Yes	Bring ID later	*	unclear
Vermont	No	Yes	Affidavit	2 days	unclear

States	**Was there a Statewide DB in 2004?**	**Are Outside Precincts Counted in Presidental Elections?**	**Verification Method**	**What is the time line for counting PV ballots?**	**Is this Review process open?**
Virginia	No	No	Affidavit	7 days	limited
Washington	No	Yes	Check address & registration	*	yes
West Virgina	Yes	No	Check address & registration	30 days	unclear
Wisconsin	No	No	Bring ID later	*	unclear
Wyoming	No	No	Affidavit	*	unclear

* Data to come on timeline classifications for these remaing states.

Table 3 -- Information for Voters

Provided on State Elections Website?					
States	**PV Requirements**	**VID Requirements**	**Registration Verification**	**Precinct Verification**	**Notification of Voters**
Alabama	No	Yes	No	No	Phone
Alaska	No	Yes	No	Yes	Phone
Arizona	No	No	No	No	Counties
Arkansas	Yes	No	No	No	Counties
California	Yes	No	No	Yes	Counties
Colorado	Yes	Yes	No	No	Counties
Connecticut	Yes	Yes	No	No	Phone
Delaware	Yes	No	No	Yes	Website
D.C.	Yes	No	Yes	Yes	Website
Florida	No	Yes	No	No	Counties
Georgia	No	Yes	Yes	Yes	Counties
Hawaii	No	Yes	No	Yes	Phone
Idaho	EDR	Yes	No	No	EDR
Illinois	Yes	No	No	No	Website
Indiana	No	No	No	No	Phone
Iowa	Yes	Yes	No	No	Mail
Kansas	Yes	No	No	No	Counties
Kentucky	Yes	No	Yes	Yes	Website
Louisiana	Yes	No	No	Yes	Phone
Maine	EDR	Yes	No	Yes	EDR
Maryland	Yes	Yes	No	No	Website/Phone
MA	Yes	No	No	Yes	Phone
Michigan	Yes	Yes	Yes	Yes	Mail
Minnesota	EDR	Yes	No	Yes	EDR
Mississippi	No	No	No	No	Counties
Missouri	Yes	Yes	No	No	Phone
Montana	No	Yes	No	No	Mail
Nebraska	No	No	No	No	Website/Phone
Nevada	No	No	No	No	Website/Phone
New Hampshire	EDR	No	No	No	EDR
New Jersey	Yes	Yes	No	No	Website/Phone
New Mexico	Yes	Yes	No	No	Phone
New York	No	No	No	No	Mail
North Carolina	No	No	Yes	Yes	Website
North Dakota	NR	Yes	NR	No	NR
Ohio	Yes	Yes	No	No	Phone
Oklahoma	No	Yes	No	No	Phone
Oregon	No	No	No	No	Phone
Pennsylvania	Yes	Yes	No	No	Phone
Rhode Island	Yes	Yes	No	No	Website
South Carolina	Yes	Yes	Yes	No	Website
South Dakota	Yes	No	No	Yes	Mail
Tennessee	No	No	No	No	Mail
Texas	Yes	Yes	No	No	Mail
Utah	Yes	Yes	No	Yes	Phone
Vermont	No	Yes	No	Yes	Phone
Virginia	Yes	Yes	No	Yes	Phone
Washington	No	Yes	No	No	Counties

Provided on State Elections Website?					
States	**PV Requirements**	**VID Requirements**	**Registration Verification**	**Precinct Verification**	**Notification of Voters**
West Virgina	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

Table 4 -- Litigation and Statues

States	Litigation pre-2004 election?	Litigation post-2004 election?	Were clarifying PV regulations promulgated post election 2004?	Type of Clarifications
Alabama				
Alaska				
Arizona		Yes	Yes	Voter ID
Arkansas			Yes	Wrong precinct
California				
Colorado	Yes	Yes	Yes	Wrong precinct, timeline, counting
Connecticut				
Delaware				
D.C.				
Florida		Yes	Yes	Timeline, eligibility
Georgia			Yes	Voter ID
Hawaii				
Idaho				
Illinois				
Indiana			Yes	Voter ID, timeline, counting
Iowa				
Kansas				
Kentucky				
Louisiana			Yes	Counting
Maine				
Maryland				
Massachusetts				
Michigan		Yes		
Minnesota				
Mississippi				
Missouri				
Montana			Yes	Eligibility
Nebraska				
Nevada				
New Hampshire				
New Jersey				
New Mexico			Yes	Counting
New York		Yes		
North Carolina		Yes	Yes	Wrong precinct, counting
North Dakota				
Ohio	Yes	Yes		
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota				
Tennessee				
Texas				
Utah				

States	**Litigation pre-2004 election?**	**Litigation post-2004 election?**	**Were clarifying PV regulations promulgated post election 2004?**	**Type of Clarifications**
Vermont				
Virginia			Yes	Timeline, voter notification
Washington	Yes	Yes	Yes	Voter ID, timeline, counting
West Virgina				
Wisconsin				
Wyoming				

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:28 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Provisional Voting Report Status and Request for Advice

Karen Lynn-Dyson
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Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:27 AM -----

"John Weingart"
<Johnwein@rci.rutgers.edu>
11/23/2005 01:47 PM
Please respond to
John.Weingart@rutgers.edu

To klynndyson@eac.gov
cc [redacted], rmandel@rci.rutgers.edu
Subject Re: Provisional Voting Report Status and Request for Advice

Thanks Karen. Given the likely EAC review schedule, I think we'll take a few more days to finetune our draft Provisional Voting report and submit it to you early next week. Also, by late next week, we'll give you a proposed revised schedule and revised budget. Thanks for you quick feedback. Hope you have a great Thanksgiving.

John

\> John-
\>
\> To follow up on the voice mail message I've just left you-
\>
\> EAC agrees with a Best Practices approach rather than the creation of a
\> Guidance document as a result of this work.
\>
\> EAC has major commitments and project deliverables related to releasing
\> its Voluntary Voting Systems Guidelines by the end of the calendar year. A
\> January date for an EAC review of your document is more realistic.
\>
\> The Commissioners will have to review and provide input relating to what
\> steps, if any, they will want Eagleton to take beyond the initial creation
\> of the agreed-upon voter ID and provisional voting documents.
\>
\> I will forward your inquiry regarding the process for requesting a
\> no-cost extension to our contracting folks.
\>
\> EAC will need further information regarding how you anticipate
\> re-allocating funds, in light of fewer public hearings.
\>
\> Hope this helps.
\>
\> regards-
\> b
\>

> Karen Lynn-Dyson
> Research Manager
> U.S. Election Assistance Commission
> 1225 New York Avenue , NW Suite 1100
> Washington, DC 20005
> tel:202-566-3123
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Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:27 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Provisional Voting Report Status and Request for Advice

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:26 AM -----

"John Weingart" <john.weingart@rutgers.edu>
11/15/2005 10:53 AM
Please respond to john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel" <rmandel@rci.rutgers.edu>
cc "Tom O'Neill" [redacted]
Subject Provisional Voting Report Status and Request for Advice

KeyDatesRev1110.doc Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18^th . Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?

2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule

realistic in anticipating EAC comments no later than the week of December 12^th on the report we send you at the end of this week?

3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)

4. In any case, we will need a no-cost extension to the contract to carry us past December 31^st . How do we make that request?

5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

--

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:24 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Meeting with EAC and Ballot Design

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:22 AM -----

"Tom O'neill"
<[redacted]>
07/19/2005 06:07 PM

To klynndyson@eac.gov
cc
Subject Meeting with EAC and Ballot Design

Karen, This email addresses two topics.

1. Meeting with EAC

At the end of August, we will have a draft of the Analysis and Alternatives paper for provisional voting, and we will have developed an outline of the alternatives to be described in the Preliminary Guidance Document (PGD). Before beginning to draft the PGD, we would benefit from a discussion with EAC staff and, perhaps, the commissioners. We would like to explore, through you, the scheduling of a meeting for that purpose, and suggest the date of August 26 at your offices in Washington. Several of us would attend and others might participate by teleconference.

2. Design of Provisional Ballots

In our teleconference a week ago, Tom Wilkey asked if we were collecting actual provisional ballots from around the country to assess their design. A collection of provisional ballots is not a deliverable under our contract, but at your request we have estimated what such an effort might require.

The goal would be to collect ballots, examine them to determine how well they conform to any ballot design criteria established in state legislation or regulations and possibly evaluate them against objective design standards of clarity and ease of use.

If state regulations or legislation specify the detailed design of provisional ballots, collecting a sample ballot and envelope from each state would be feasible. If states have delegated the details of design to county or other levels of government, the collection process would probably not be worth the substantial time and expense involved in contacting more than 3,000 jurisdictions.

Step One -- Feasibility

A prudent approach to this work would begin with a feasibility study. It would determine how many states use a uniform provisional ballot throughout the state and how many allow significant variation in design among counties or other jurisdictions. Working with the statutes and regulations now being collected by Moritz, we would also determine if state statutes or regulations specify the details of the design of provisional ballots. This work would provide the information needed to decide if the project is doable at reasonable cost. The feasibility study would probably require 5 to 10 days of research time. On a time-and-materials basis, including overhead charges, the cost of the feasibility analysis would be in the range of $2,500 – $5,000.

Step Two -- Collection and Analysis

If EAC determines on the basis of our feasibility report that the project is feasible, collecting the provisional ballots and envelopes would require 3 – 4 weeks of research, collection and analysis at a cost of $6,000 -- $9,000 (with overhead). The research process would include:

- Determining the appropriate official in each state to contact,
- Sending each official a letter requesting a provisional ballot and envelope as used in federal elections,
- Making up to 3 follow-up calls.
- Compiling and categorizing the ballots
- Comparing the actual ballots to any specifications contained in state statutes or regulations.

The deliverables would be:

- The collection of ballots,
- A compendium of statutory or regulatory specifications of ballot design,
- Classification of ballots according to the major design principles reflected in their layout and appearance.

Possible Step 3 – Evaluation of Provisional Ballot Design

The EAC might also wish to consider a logical, third step. Once the ballots are collected, Eagleton could arrange to evaluate provisional ballots for clarity and user-friendliness. The review could be done by one or more focus groups that Eagleton would empanel, or it could be conducted by a design firm that would review the ballots and make recommendations for principles of good design that could be issued as guidance to the states. We have not identified an individual designer or firm with credentials in this field, but could do so as part of the feasibility study. Eagleton could do the focus group in-house at relatively modest cost.

Please let me know if you would like us to go further with this assignment.

Tom O'Neill

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:23 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Peer Review Group

Karen Lynn-Dyson
Research Manager
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:21 AM -----

Carol A. Paquette/EAC/GOV
07/08/2005 05:13 PM

To Juliet E. Thompson/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC
Subject Fw: Peer Review Group

Julie -

I don't remember saying much of anything but a few pleasantries to Tom in New York. Did you talk to him about this topic? I'm really at a loss on this. (Maybe I'm having an extended senior moment.)

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
----- Forwarded by Carol A. Paquette/EAC/GOV on 07/08/2005 05:07 PM -----

"Tom O'Neill"
[redacted]
07/08/2005 03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>
cc "Laura Williams" [redacted]>, "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
Subject Peer Review Group

Carol,

After our discussion in New York, you asked me to put in writing our response to the EAC's suggestions for expanding the number and kinds of groups that would review and comment on our work. I hope after your review of this response, we will be able to quickly recruit a balanced Peer Review Group (PRG) and move ahead as the schedule in our work plan indicates. Attached is a revised list of the members we propose for appointment to the PRG. We will probably not be able to persuade all of them to serve, but the number and range of views included on the proposed list should ensure that the resulting group is well-balanced.

Tom

RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG

Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

1. Not sufficient conservative representation on the PRG

2. Create a "tiered process" of review in which:
    - A. The PRG will prepare a dispassionate analysis of the issues and draw some tentative conclusions.
    - B. PRG's analysis would be vetted by a defined/select group of local election officials.
    - C. A defined/select group of advocacy organizations would review the comments of the local election officials
    - D. Empanel a final focus group of local election officials, advocates and academics for an overall, interactive reaction to the analysis and recommendations.

Project Team Response

Creating three new committees to the review process to supplement the work of the Peer Review Group (PRG) is possible, but would add at least 8 weeks –and possibly 12 weeks-- to our completion of the guidance document on provisional voting. We believe this delay would risk limiting the value of this project for the 2006 election. In addition, the change would add at least $30,000 to the cost of our work. (See the attached table showing the possible effect on our work plan, and note the optimistic assumptions such as the ability to hold a hearing the week after Christmas.). If the same groups were to be engaged in reviewing our work on Voter ID, the time for that work would also have to be stretched at a similar increased cost.

This additional cost and the added time might be worthwhile. . . if the new layers of review were to produce a consensus on how to strengthen the research, sharpen the analysis, and increase the relevance of the Guidance Document. Our team concluded, however, that additional review groups were unlikely to achieve these results.

PRG focuses on quality of research

We believe that our research would be strengthened by a balanced Peer Review Group that will focus on the design of the research and our conduct of it. Based on the EAC's recommendation, we have revised the composition of the PRG to include additional, well-recognized authorities in the field whose perspective is generally agreed to be conservative.

The PRG will focus on the strength of the research design and the quality of our analysis, not on the politics of our recommendations for the guidance document. The PRG will critique the research design and suggest how to strengthen it. Members of the group will review the quality of our analysis so that we can fill holes and correct errors before we make policy recommendations to the EAC. The PRG may or may not meet as a group. The likelihood is that most comments will come in writing from individual members, most of whose schedules would not permit attendance at meetings. In any case, the PRG members will not gather around a table to come to consensus on the study's recommendations.

While using the PRG as a forum to reach consensus on the knotty issues involved does not appear practical, the EAC can benefit from the work of other groups in this regard. It is not necessary for this project to duplicate the deliberative processes of the Carter-Baker Commission, the Century Foundation and the Election Center. The EAC itself as well as the project team can get the benefit of these reports without duplicating this "policy evaluation board" structure as part of this contract.

Project Team focuses on analysis and recommendations

Karen reported that the Commissioners believed that the PRG would "prepare a dispassionate analysis of the issues and draw some tentative conclusions." As we see it, the PRG will neither analyze data nor draw conclusions, tentative or otherwise. Its members will review and comment on how the Project Team has designed and carried out the research. Analysis, conclusions and recommendations are the responsibility of the Project Team. We have all seen in the preface to books or articles a sentence or two that read something like this, "The author thanks Mr. X, Ms. Y, and Dr. Z for their review and comment on the manuscript. Their analysis has strengthened the work, but they are in no way responsible for errors or for my conclusions." That is the way we think about the Peer Review Group.

In short, the PRG will help ensure that EAC's Guidance Document is founded on a solid base of data and analysis. The review and comment on the Preliminary Guidance Document by the EAC's Board of Advisors and Standards Board will provide participation by important stakeholder groups without the need for the other review committees. This Board is broad-based and represents a key stakeholder group. It also enjoys a significant advantage over a "defined/select" group we might empanel. Any group we define will be open to criticism or charges of bias by representatives of interest groups not represented.

The criticism and charges of bias might be tolerable, but only if we could expect consensus from the "defined/select" group we would appoint. We believe that consensus would be elusive. In empanelling a "defined/select" group, we would naturally look for balance and would appoint members to represent a point of view or an institutional interest. As representatives they would likely feel that they had little choice but to be strong advocates. They would have little incentive to compromise. Our research, as opposed to our policy recommendations, would be better served by the analysis of scholars than by the advocacy of interests.

Policy judgments

We regard the EAC itself as responsible for the policy judgments involved in shaping the Guidance Document. We plan, of course, to respond to the EAC's comments on our preliminary draft, so that the EAC's comments will shape the Preliminary Guidance Document before it is released for public comment. And further revision will follow the public hearing and comments. The EAC and individual Commissioners can always seek comment informally on our analysis or recommendations. That course appears to us preferable to the creation of a new, more elaborate review process.

PROPOSED MEMBERSJuly6.doc

Deliberative Process Privilege

REVISED
PROPOSED MEMBERS OF PEER REVIEW GROUP

July 6, 2005

Role of the Peer Review Group

Members of the Peer Review Group will review the research design for the project, including the survey of local election officials, the analysis of Voter ID regime on turnout, the state-by-state narrative of developments in provisional voting and voter identification, and the compilation and analysis of statutes, administrative regulations, and case law affecting provisional voting and voter identification. They will also review the report on Analysis and Alternatives. They may review the draft of the Preliminary Guidance Document before it goes to the Board of Advisors for comment.

Members of the group will be respected authorities in their fields and represent a range of opinions and perspectives, although their views on policy will be less important to the study than their views on the quality of the research on which policy recommendations are based.

Ideally, the group would meet once, but even that may not be possible to arrange given the tight time period for the project, the demanding schedules of the members, and their wide dispersal across the county. They will function largely by reviewing written work and making written comments on it. The timing of their involvement is indicated on the work plan.

R. Michael Alvarez, Ph.D.
Professor of Political Science
California Institute of Technology
rma@hss.caltech.edu
626-395-4422
Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College, his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

Guy-Uriel E. Charles
Associate Professor
School of Law
University of Minnesota
342 Mondale Hall
229-19th Avenue South
Minneapolis, MN 55455
612-626-9154
gcharles@umn.edu

Charles teaches and writes on election law, law and politics, and race. He received his B.A. degree in Political Science, *cum laude* from Spring Arbor University and his J.D. from the University of Michigan Law School, where he was Editor-in-Chief of the *Michigan Journal of Race & Law.* He is completing a PhD in political science from the University of Michigan.

Brad Clark
Professor of Law
George Washington University School of Law

Clark received his B.A. in Political Science from Florida State University and his J.D. from Columbia Law School in 1985. He served as a law clerk to the Judge Robert H. Bork on the US Court of Appeals and went on to clerk for Justice Antonin Scalia on the Supreme Court. He has been on the faculty at George Washington University Law School for 12 years, where he has taught Constitutional Law, Federal Courts, and Civil Procedure.

Pamela Susan Karlan
Montgomery Professor of Public Interest Law
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610
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Karlan's principal subjects include legal regulation of the political process. She earned her BA, MA, and JD at Yale University, and was previously a Professor at the University of Virginia. She serves on the California Fair Political Practices Commission and is a Cooperating Attorney with the NAACP Legal Defense and Education Fund. She has also been a lecturer at the FBI National Academy. Among her publications, she is a co-author of When Elections Go Bad: The Law of Democracy and the Presidential Election of 2000.

Martha E. Kropf, Ph.D.
Assistant Professor of Political Science
University of Missouri-Kansas City
816-235-5948; KropfM@umkc.edu
Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

Deleted: Deborah Goldberg, Ph.D¶
Program Director, Democracy Program¶
Brennan Center for Justice at NYU School of Law¶
161 Avenue Of The Americas, 12th Floor
New York, NY 10013
212-998-6730
Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.¶

Daniel H. Lowenstein
Professor of Law
School of Law
University of California, Los Angeles
Box 951476,
Los Angeles, CA 90095-1476
(310) 825-4841

Among other courses, Lowenstein teaches Election Law. His textbook, *Election Law* has become a standard in the field. He earned his A.B. at Yale and his LL.B. at Harvard. While working for California's Secretary of State he was the main drafter of the *Political Reform Act* in 1971.He was the first chair of the Fair Political Practices Commission. He has served on the national governing board of Common Cause. He has written on such topics as campaign finance, redistricting, bribery, initiative elections, and political parties.

John F. Manning
Professor
Harvard Law School

Now at Harvard, Manning was appointed Assistant Attorney General for the Office of Legal Counsel by President Bush in 2001. He had been Professor of Law at Columbia Law School. Had had served as Assistant to the Solicitor General of the United States and was an Attorney-Adviser in the Office of Legal Counsel at the Department of Justice during the administrations of President George H. W. Bush and President Reagan. He is a graduate of Harvard College and Harvard Law School.

Tim Storey
Program Principal
Legislative Management Program
National Conference of State Legislatures
7700 East First Place
Denver, CO 80230
303-364-7700
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Peter G. Veniero, Esq.
Counsel
Sills, Cummis, Epstein and Gross, PC
One Riverfront Plaza
Newark, New Jersey 07102
Tel: 973- 643-7000

Verniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

Plus one or two former, senior election officials to be suggested by the EAC

Deleted: **Wade Henderson, Esq.**¶
Executive Director¶
Leadership Conference on Civil Rights ¶
1629 K Street, NW, 10th Floor¶
Washington, DC 20006¶
Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU. ¶
¶
Kay Maxwell¶
President¶
League of Women Voters of the U.S.¶
1730 M Street NW, Suite 1000¶
Washington, DC 20036-4508 ¶
202-429-1965¶
Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project. ¶

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Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:23 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised Work Plan --Gantt Chart

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
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tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:21 AM -----

"Tom O'Neill"
[redacted]
06/20/2005 12:19 PM

To klynndyson@eac.gov
cc
Subject RE: Revised Work Plan --Gantt Chart

Karen:

I just downloaded the same file I sent you. It is formatted for printing at 11x17, and I had no difficulty magnifying it to that size on my computer screen. I don't have a printer than handles paper that size so I can't print it myself. The only other format I have available is a Microsoft project file, and that is attached. (Although in my experience pdf files are the easiest to handle.)

Tom

-----Original Message-----
From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, June 20, 2005 12:04 PM
To: [redacted]
Cc: lotero@eac.gov
Subject: Re: Revised Work Plan --Gantt Chart

Happy Monday, Tom

The EAC Research Associate and I are having difficulty reading the Gantt chart you sent and need it sent in a format in which we can enlarge it to at least 11X 17.

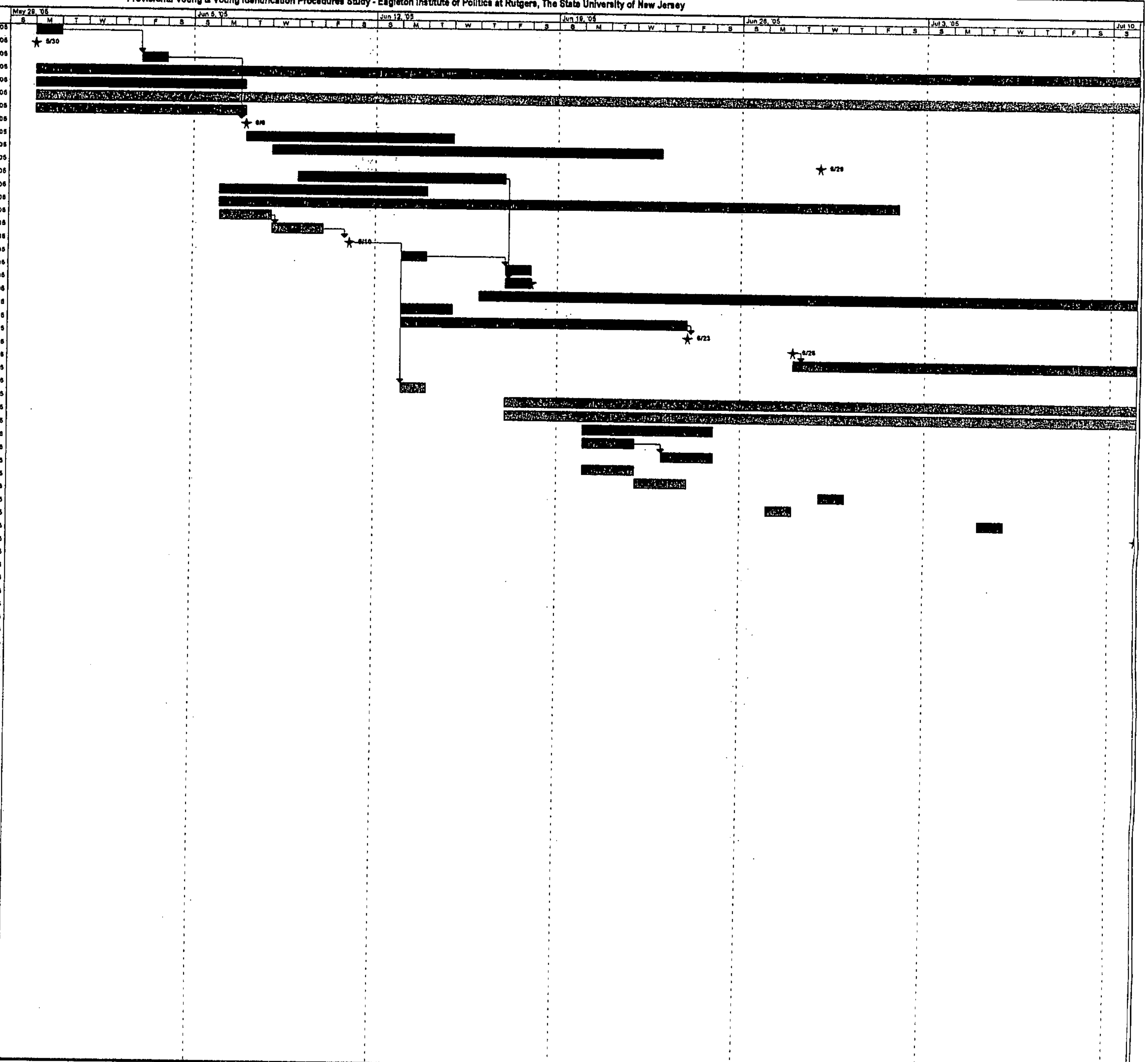
I'd like to be able to share this with the Commissioners later on this afternoon, but understand if your not able to convert it by then.
Thanks

GanttChartJune-Aug GanttChartJune-Aug GanttChartMonthly.mpp
Karen Lynn-Dyson

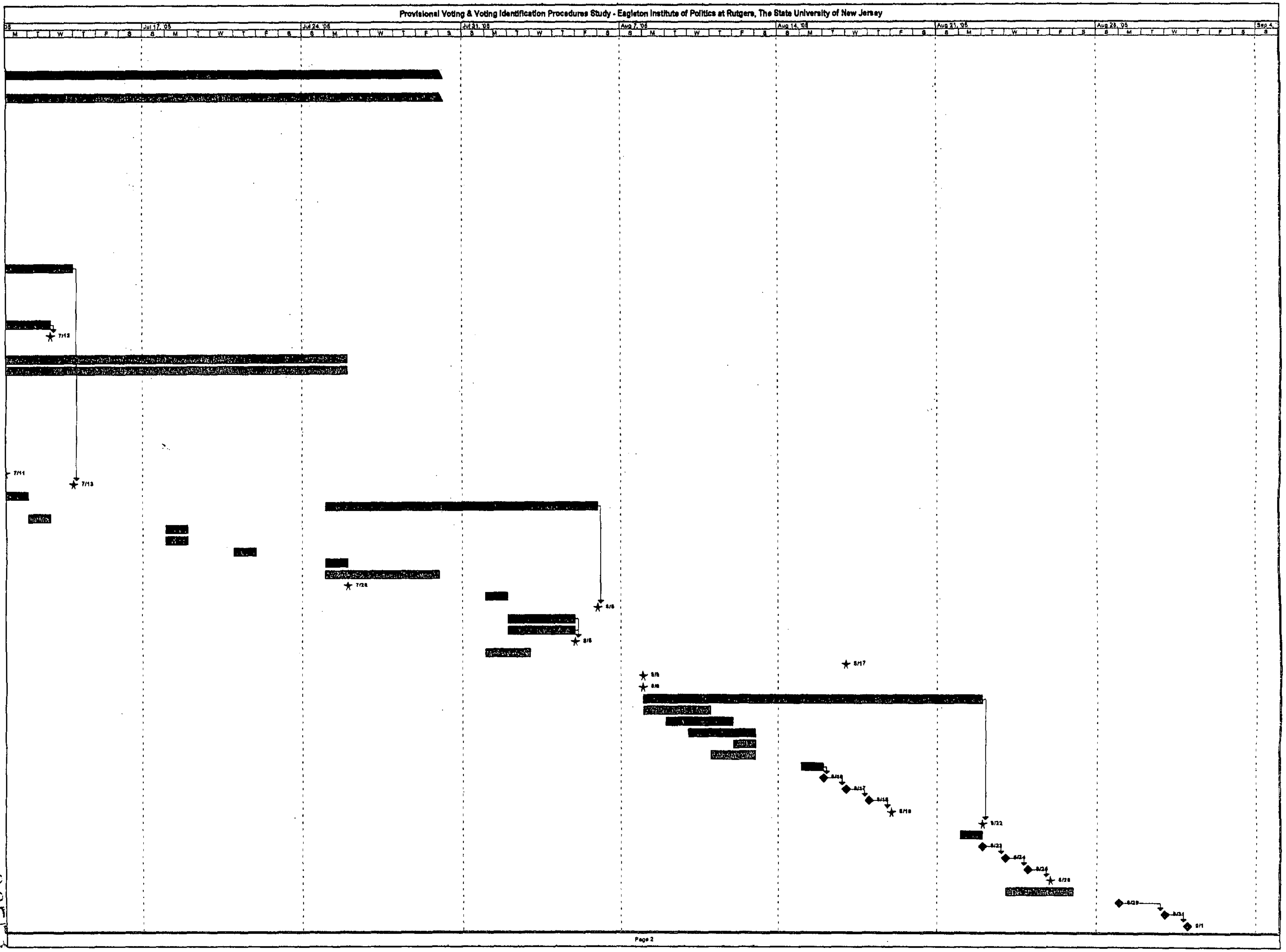
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

ID	Task Name	Duration	Start	Finish
1	Update work plan	1 day	Mon 5/30/05	Mon 5/30/05
2	Meeting of Rutgers team	0 days	Mon 5/30/05	Mon 5/30/05
3	Review updated work plan	1 day	Fri 6/3/05	Fri 6/3/05
4	Compile legislation	45 days?	Mon 5/30/05	Fri 7/29/05
5	Begin survey design of local off.	6 days?	Mon 5/30/05	Mon 6/6/05
6	Compile legislation	45 days	Mon 5/30/05	Fri 7/29/05
7	Scan for panelists. Identify hearing panels	6 days	Mon 5/30/05	Mon 6/6/05
8	Updated work plan to EAC	0 days	Mon 6/6/05	Mon 6/6/05
9	Identify possible PRG members	6 days	Tue 6/7/05	Tue 6/14/05
10	Subcontract to MCL	11 days	Wed 6/8/05	Wed 6/22/05
11	Execute by MCL	0 days	Wed 6/29/05	Wed 6/29/05
12	Coordinate design of data mngmt system	6 days	Thu 6/9/05	Thu 6/16/05
13	Gain survey approvals and contract	6 days	Mon 6/6/05	Mon 6/13/05
14	Scan info sites on provisional voting	20 days?	Mon 6/6/05	Fri 7/1/05
15	Develop priority list	2 days	Mon 6/6/05	Tue 6/7/05
16	Agree on panel recommendations	2 days	Wed 6/8/05	Thu 6/9/05
17	List to EAC / EAC Approval	0 days	Fri 6/10/05	Fri 6/10/05
18	PRG nominations to Team for review	1 day?	Mon 6/13/05	Mon 6/13/05
19	PRG nominations to EAC review	1 day?	Fri 6/17/05	Fri 6/17/05
20	Set up data management system	1 day?	Fri 6/17/05	Fri 6/17/05
21	Develop project website	20 days?	Thu 6/16/05	Wed 7/13/05
22	Receive election day study and review it	2 days?	Mon 6/13/05	Tue 6/14/05
23	Draft survey instrument / Sampling Tech.	9 days?	Mon 6/13/05	Thu 6/23/05
24	Draft survey to EAC	0 days	Thu 6/23/05	Thu 6/23/05
25	Survey to IRB	0 days	Tue 6/28/05	Tue 6/28/05
26	IRB Review	11 days?	Tue 6/28/05	Tue 7/12/05
27	IRB Approval	0 days	Tue 7/12/05	Tue 7/12/05
28	Revise panelist list	1 day?	Mon 6/13/05	Mon 6/13/05
29	Scan info sites for Voter ID state issues	27 days?	Fri 6/17/05	Mon 7/25/05
30	Data collection on Voter ID & turnout	27 days?	Fri 6/17/05	Mon 7/25/05
31	Recruit PRG members	5 days?	Mon 6/20/05	Fri 6/24/05
32	Team approves survey & reviews w/ EAC	2 days?	Mon 6/20/05	Tue 6/21/05
33	Review board approves survey	2 days?	Thu 6/23/05	Fri 6/24/05
34	Draft panelist letter for EAC	2 days?	Mon 6/20/05	Tue 6/21/05
35	Develop questions for panel	2 days?	Wed 6/22/05	Thu 6/23/05
36	Background materials to PRG members	1 day?	Wed 6/29/05	Wed 6/29/05
37	Follow up with panelists	1 day?	Mon 6/27/05	Mon 6/27/05
38	Status reports June tasks (all)	1 day?	Tue 7/5/05	Tue 7/5/05
39	June Progress Report to EAC	0 days	Mon 7/11/05	Mon 7/11/05
40	Website Operational	0 days	Wed 7/13/05	Wed 7/13/05
41	Survey approval by Review Board	1 day?	Mon 7/11/05	Mon 7/11/05
42	Survey in the field	10 days?	Mon 7/25/05	Fri 8/5/05
43	Review hearing summary	1 day?	Tue 7/12/05	Tue 7/12/05
44	Brief PRG on progress and conclusions	1 day?	Mon 7/18/05	Mon 7/18/05
45	Summarize Election Day Study	1 day?	Mon 7/18/05	Mon 7/18/05
46	Review and discuss Election Day Study	1 day?	Thu 7/21/05	Thu 7/21/05
47	Brief stakeholders on progress and conc.	1 day?	Mon 7/25/05	Mon 7/25/05
48	Data analysis of Voter ID & turnout	5 days?	Mon 7/25/05	Fri 7/29/05
49	Hearing	0 days	Tue 7/26/05	Tue 7/26/05
50	Status reports to LV for July Tasks	1 day?	Mon 8/1/05	Mon 8/1/05
51	Survey complete	0 days	Fri 8/5/05	Fri 8/5/05
52	Draft analysis and alternatives	3 days?	Tue 8/2/05	Thu 8/4/05
53	Complete compendium	3 days?	Tue 8/2/05	Thu 8/4/05
54	Review analysis and compendium	0 days	Fri 8/5/05	Fri 8/5/05
55	Data analysis of Voter ID & turnout	2 days?	Mon 8/1/05	Tue 8/2/05
56	Hearing Summary to EAC	0 days	Wed 8/17/05	Wed 8/17/05
57	July Progress Report to EAC	0 days	Mon 8/8/05	Mon 8/8/05
58	Submit analysis and alts. Draft to PRG	0 days	Mon 8/8/05	Mon 8/8/05
59	Survey Analysis	11 days?	Mon 8/8/05	Mon 8/22/05
60	Draft hearing summary	3 days?	Mon 8/8/05	Wed 8/10/05
61	Survey results available	3 days?	Tue 8/9/05	Thu 8/11/05
62	Arrange October Public Hearing	3 days?	Wed 8/10/05	Fri 8/12/05
63	PRG reviews analysis & alts.	1 day?	Fri 8/12/05	Fri 8/12/05
64	Complete draft report on Voter ID turnout	2 days?	Thu 8/11/05	Fri 8/12/05
65	PRG comments on analysis & alts.	1 day?	Mon 8/15/05	Mon 8/15/05
66	Revise	0 days	Tue 8/16/05	Tue 8/16/05
67	Review	0 days	Wed 8/17/05	Wed 8/17/05
68	Revise	0 days	Thu 8/18/05	Thu 8/18/05
69	Draft report & compendium to EAC	0 days	Fri 8/19/05	Fri 8/19/05
70	Review draft report on Voter ID & turnout	0 days	Mon 8/22/05	Mon 8/22/05
71	Survey analysis complete	1 day?	Mon 8/22/05	Mon 8/22/05
72	Draft outline of PGD	0 days	Tue 8/23/05	Tue 8/23/05
73	Review draft outline	0 days	Wed 8/24/05	Wed 8/24/05
74	Revise	0 days	Thu 8/25/05	Thu 8/25/05
75	Meet w/EAC to review draft report	0 days	Fri 8/26/05	Fri 8/26/05
76	Revise report	3 days?	Wed 8/24/05	Fri 8/26/05
77	Draft PGD	0 days	Mon 8/29/05	Mon 8/29/05
78	Review	0 days	Wed 8/31/05	Wed 8/31/05
79	Revise	0 days	Thu 9/1/05	Thu 9/1/05



Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey



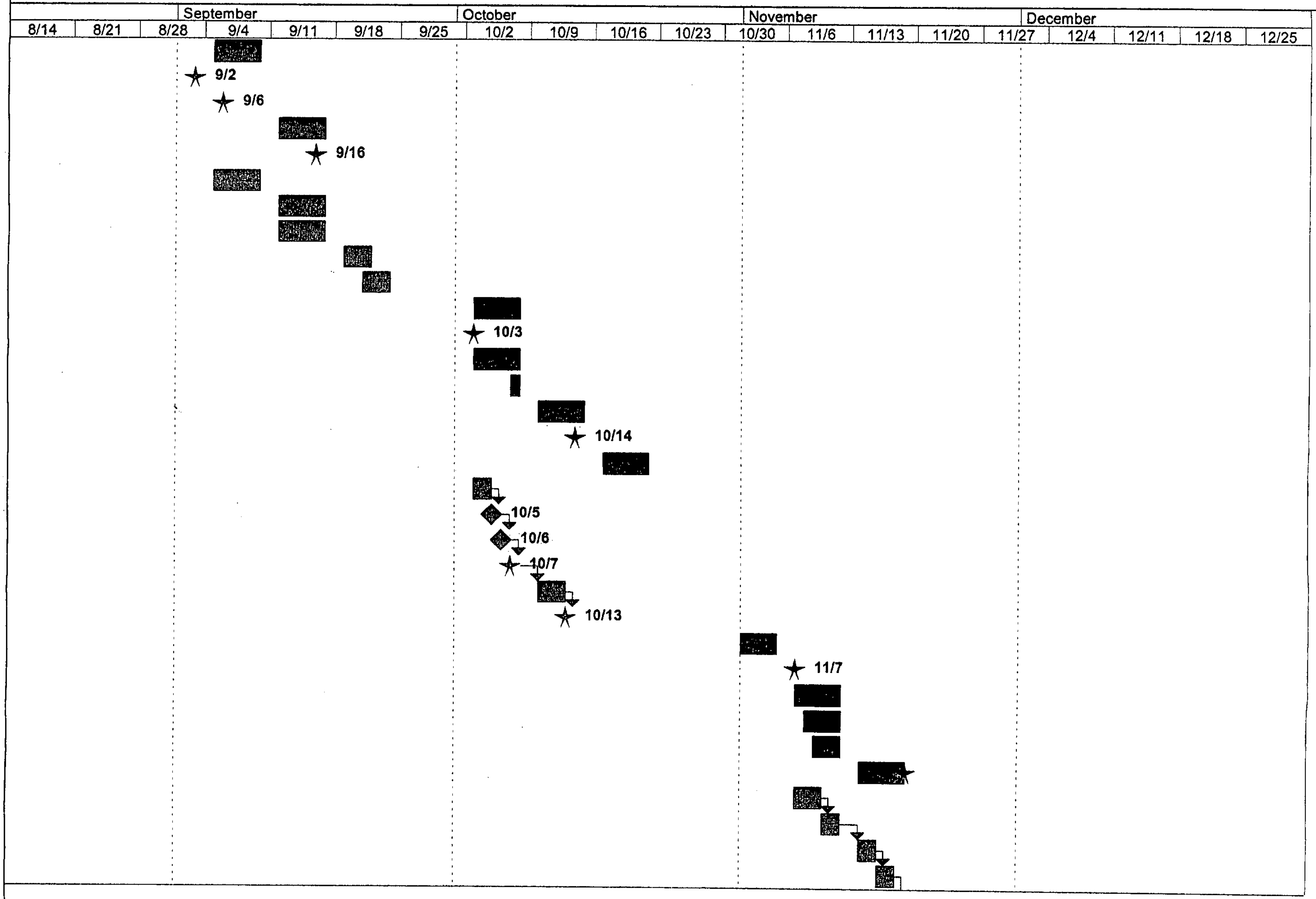
Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

ID	Task Name	Duration	Start	Finish					July				August	
					6/5	6/12	6/19	6/26	7/3	7/10	7/17	7/24	7/31	8/7
1	Status reports for August tasks	5 days?	Mon 9/5/05	Fri 9/9/05										
2	August Progress Report to EAC	0 days	Fri 9/2/05	Fri 9/2/05										
3	Draft PGD to EAC for review	0 days	Tue 9/6/05	Tue 9/6/05										
4	Receive EAC commnets; revise	5 days?	Mon 9/12/05	Fri 9/16/05										
5	Submit Draft GD to EAC BOA & SB	0 days	Fri 9/16/05	Fri 9/16/05										
6	Draft Analysis & Alts. Report	5 days?	Mon 9/5/05	Fri 9/9/05										
7	Complete Compendium	5 days?	Mon 9/12/05	Fri 9/16/05										
8	Arrange December Public Hearing	5 days?	Mon 9/12/05	Fri 9/16/05										
9	Review draft report	3 days?	Mon 9/19/05	Wed 9/21/05										
10	Revise draft report	3 days?	Wed 9/21/05	Fri 9/23/05										
11	Status reports for Septemeber tasks	5 days?	Mon 10/3/05	Fri 10/7/05										
12	September Progress Report to EAC	0 days	Mon 10/3/05	Mon 10/3/05										
13	Meet EAC BOA/SB	5 days?	Mon 10/3/05	Fri 10/7/05										
14	Revise GD	1 day?	Fri 10/7/05	Fri 10/7/05										
15	Draft GD to EAC for publication	5 days?	Mon 10/10/05	Fri 10/14/05										
16	Publication	0 days	Fri 10/14/05	Fri 10/14/05										
17	Public Hearing on GD	5 days?	Mon 10/17/05	Fri 10/21/05										
18	Report Analysis & Alts. To PRG	2 days?	Mon 10/3/05	Tue 10/4/05										
19	PRG Comments	0 days	Wed 10/5/05	Wed 10/5/05										
20	Revise	0 days	Thu 10/6/05	Thu 10/6/05										
21	Submit draft to EAC	0 days	Fri 10/7/05	Fri 10/7/05										
22	Revise	3 days?	Mon 10/10/05	Wed 10/12/05										
23	Report, Alts., & Compendium to EAC	0 days	Thu 10/13/05	Thu 10/13/05										
24	Status reports for October tasks	4 days?	Tue 11/1/05	Fri 11/4/05										
25	October Progress Report to EAC	0 days	Mon 11/7/05	Mon 11/7/05										
26	Hearing Summary	5 days?	Mon 11/7/05	Fri 11/11/05										
27	Analysis of Comments	4 days?	Tue 11/8/05	Fri 11/11/05										
28	Revise Guidance Document	3 days?	Wed 11/9/05	Fri 11/11/05										
29	Final Guidance to EAC for adoption	5 days?	Mon 11/14/05	Fri 11/18/05										
30	Draft PGD	3 days?	Mon 11/7/05	Wed 11/9/05										
31	Review draft	2 days?	Thu 11/10/05	Fri 11/11/05										
32	Draft PGD to EAC for review	2 days?	Mon 11/14/05	Tue 11/15/05										
33	Revise	2 days?	Wed 11/16/05	Thu 11/17/05										

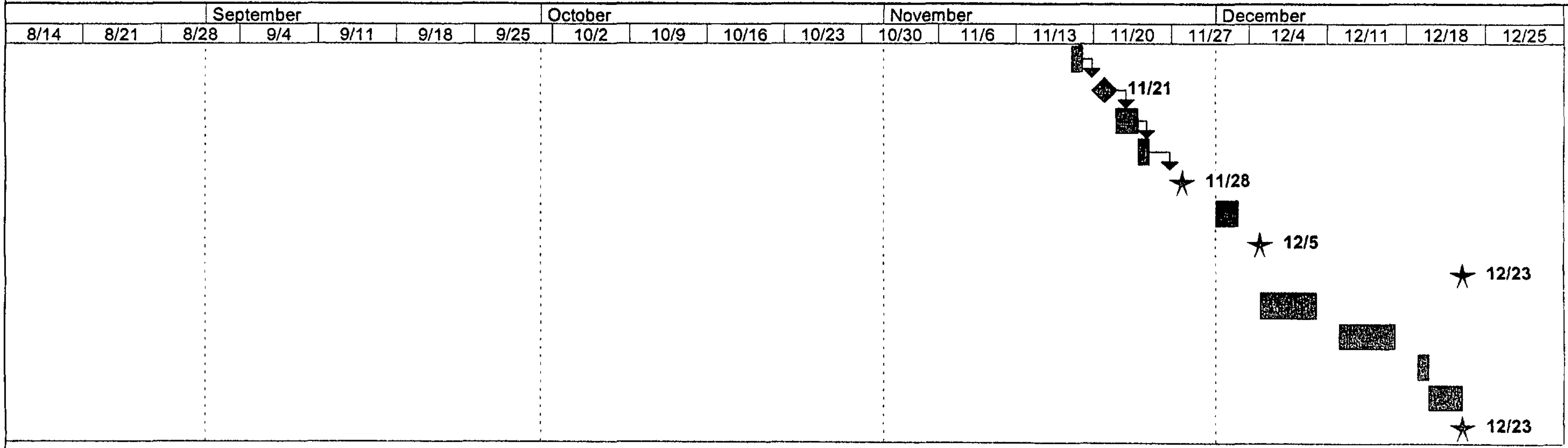
Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

ID	Task Name	Duration	Start	Finish					July				August	
					6/5	6/12	6/19	6/26	7/3	7/10	7/17	7/24	7/31	8/7
34	PGD to BOA	1 day?	Fri 11/18/05	Fri 11/18/05										
35	Meet EAC, BOA/SB	0 days	Mon 11/21/05	Mon 11/21/05										
36	Revise Draft GD	2 days?	Tue 11/22/05	Wed 11/23/05										
37	Draft GD to EAC	1 day?	Thu 11/24/05	Thu 11/24/05										
38	Publication	0 days	Mon 11/28/05	Mon 11/28/05										
39	Status reports for November tasks	2 days?	Thu 12/1/05	Fri 12/2/05										
40	November Progress Reports to EAC	0 days	Mon 12/5/05	Mon 12/5/05										
41	Final Reports to EAC	0 days	Fri 12/23/05	Fri 12/23/05										
42	Public Hearing	5 days?	Mon 12/5/05	Fri 12/9/05										
43	Hearing Summary	5 days?	Mon 12/12/05	Fri 12/16/05										
44	Analysis of comments	1 day?	Mon 12/19/05	Mon 12/19/05										
45	Revise Guidance Document	3 days?	Tue 12/20/05	Thu 12/22/05										
46	EAC revises and adopts Final GD	0 days	Fri 12/23/05	Fri 12/23/05										

Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey



Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey



Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:22 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Revised Work Plan --Gantt Chart

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:20 AM -----

"Tom O'Neill"
<[redacted]
06/17/2005 03:43 PM

To klynndyson@eac.gov
cc
Subject Revised Work Plan --Gantt Chart

Karen,

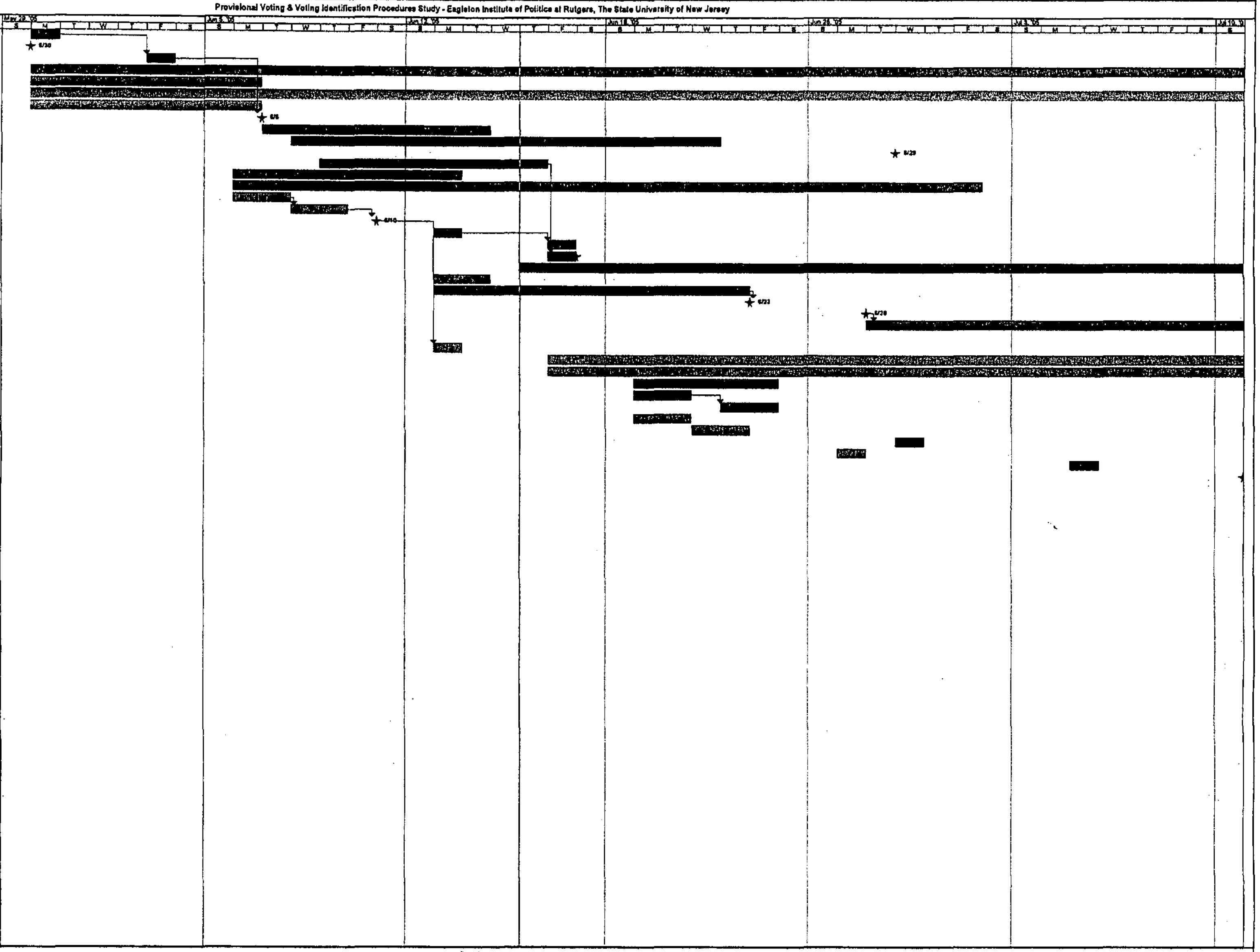
Attached is the Gantt chart that you and Carol requested. I think it is most useful if used in conjunction with the work plan table that I sent originally, but whether you use it as freestanding guide to the project or as a supplement, I hope it meets your needs.

The narrative to complement the Gantt chart will be along early next week.

GanttChartFinal.pdf Tom

Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

ID	Task Name	Duration	Start	Finish
1	Update work plan	1 day	Mon 5/30/05	Mon 5/30/05
2	Meeting of Rutgers team	0 days	Mon 5/30/05	Mon 5/30/05
3	Review updated work plan	1 day	Fri 6/3/05	Fri 6/3/05
4	Compile legislation	45 days?	Mon 5/30/05	Fri 7/29/05
5	Begin survey design of local off	6 days?	Mon 5/30/05	Mon 6/6/05
6	Compile legislation	46 days	Mon 5/30/05	Fri 7/29/05
7	Scan for panelists . Identify hearing panels	6 days	Mon 5/30/05	Mon 6/6/05
8	Updated work plan to EAC	0 days	Mon 6/6/05	Mon 6/6/05
9	Identify possible PRG members	6 days	Tue 6/7/05	Tue 6/14/05
10	Subcontract to MCL	11 days	Wed 6/8/05	Wed 6/22/05
11	Execute by MCL	0 days	Wed 6/29/05	Wed 6/29/05
12	Coordinate design of data mngmt system	6 days	Thu 6/9/05	Thu 6/16/05
13	Gain survey approvals and contract	6 days	Mon 6/6/05	Mon 6/13/05
14	Scan info sites on provisional voting	20 days?	Mon 6/6/05	Fri 7/1/05
15	Develop priority list	2 days	Mon 6/6/05	Tue 6/7/05
16	Agree on panel recommendations	2 days	Wed 6/8/05	Thu 6/9/05
17	List to EAC / EAC Approval	0 days	Fri 6/10/05	Fri 6/10/05
18	PRG nominations to Team for review	1 day?	Mon 6/13/05	Mon 6/13/05
19	PRG nominations to EAC review	1 day?	Fri 6/17/05	Fri 6/17/05
20	Set up data management system	1 day?	Fri 6/17/05	Fri 6/17/05
21	Develop project website	20 days?	Thu 6/16/05	Wed 7/13/05
22	Receive election day study and review a	2 days?	Mon 6/13/05	Tue 6/14/05
23	Draft survey instrument / Sampling Tech.	9 days?	Mon 6/13/05	Thu 6/23/05
24	Draft survey to EAC	0 days	Thu 6/23/05	Thu 6/23/05
25	Survey to IRB	0 days	Tue 6/28/05	Tue 6/28/05
26	IRB Review	11 days?	Tue 6/28/05	Tue 7/12/05
27	IRB Approval	0 days	Tue 7/12/05	Tue 7/12/05
28	Revise panelist list	1 day?	Mon 6/13/05	Mon 6/13/05
29	Scan info sites for Voter ID state issues	27 days?	Fri 6/17/05	Mon 7/25/05
30	Data collection on Voter ID & turnout	27 days?	Fri 6/17/05	Mon 7/25/05
31	Recruit PRG members	5 days?	Mon 6/20/05	Fri 6/24/05
32	Team approves survey & reviews w/ EAC	2 days?	Mon 6/20/05	Tue 6/21/05
33	Review board approves survey	2 days?	Thu 6/23/05	Fri 6/24/05
34	Draft panelist letter for EAC	2 days?	Mon 6/20/05	Tue 6/21/05
35	Develop questions for panel	2 days?	Wed 6/22/05	Thu 6/23/05
36	Background materials to PRG members	1 day?	Wed 6/29/05	Wed 6/29/05
37	Follow up with panelists	1 day?	Mon 6/27/05	Mon 6/27/05
38	Status reports June tasks (all)	1 day?	Tue 7/5/05	Tue 7/5/05
39	June Progress Report to EAC	0 days	Mon 7/11/05	Mon 7/11/05
40	Website Operational	0 days	Wed 7/13/05	Wed 7/13/05
41	Survey approval by Review Board	1 day?	Mon 7/11/05	Mon 7/11/05
42	Survey in the field	10 days?	Mon 7/25/05	Fri 8/5/05
43	Review hearing summary	1 day?	Tue 7/12/05	Tue 7/12/05
44	Brief PRG on progress and conclusions	1 day?	Mon 7/18/05	Mon 7/18/05
45	Summarize Election Day Study	1 day?	Mon 7/18/05	Mon 7/18/05
46	Review and discuss Election Day Study	1 day?	Thu 7/21/05	Thu 7/21/05
47	Brief stakeholders on progress and conc.	1 day?	Mon 7/25/05	Mon 7/25/05
48	Data analysis of Voter ID & turnout	5 days?	Mon 7/25/05	Fri 7/29/05
49	Hearing	0 days	Tue 7/26/05	Tue 7/26/05
50	Status reports to LV for July Tasks	1 day?	Mon 8/1/05	Mon 8/1/05
51	Survey complete	0 days	Fri 8/5/05	Fri 8/5/05
52	Draft analysis and alternatives	3 days?	Tue 8/2/05	Thu 8/4/05
53	Complete compendium	3 days?	Tue 8/3/05	Thu 8/4/05
54	Review analysis and compendium	0 days	Fri 8/5/05	Fri 8/5/05
55	Data analysis of Voter ID & turnout	2 days?	Mon 8/1/05	Tue 8/2/05
56	Hearing Summary to EAC	0 days	Wed 8/17/05	Wed 8/17/05
57	July Progress Report to EAC	0 days	Mon 8/8/05	Mon 8/8/05
58	Submit analysis and alts. Draft to PRG	0 days	Mon 8/8/05	Mon 8/8/05
59	Survey Analysis	11 days?	Mon 8/8/05	Mon 8/22/05
60	Draft hearing summary	3 days?	Mon 8/8/05	Wed 8/10/05
61	Survey results available	3 days?	Tue 8/9/05	Thu 8/11/05
62	Arrange October Public Hearing	3 days?	Wed 8/10/05	Fri 8/12/05
63	PRG reviews analysis & alts.	1 day?	Fri 8/12/05	Fri 8/12/05
64	Complete draft report on Voter ID turnout	2 days?	Thu 8/11/05	Fri 8/12/05
65	PRG comments on analysis & alts.	1 day?	Mon 8/15/05	Mon 8/15/05
66	Revise	0 days	Tue 8/16/05	Tue 8/16/05
67	Review	0 days	Wed 8/17/05	Wed 8/17/05
68	Revise	0 days	Thu 8/18/05	Thu 8/18/05
69	Draft report & compendium to EAC	0 days	Fri 8/19/05	Fri 8/19/05
70	Review draft report on Voter ID & turnout	0 days	Mon 8/22/05	Mon 8/22/05
71	Survey analysis complete	1 day?	Mon 8/22/05	Mon 8/22/05
72	Draft outline of PGD	0 days	Tue 8/23/05	Tue 8/23/05
73	Review draft outline	0 days	Wed 8/24/05	Wed 8/24/05
74	Revise	0 days	Thu 8/25/05	Thu 8/25/05
75	Meet w/EAC to review draft report	0 days	Fri 8/26/05	Fri 8/26/05
76	Revise report	3 days?	Wed 8/24/05	Fri 8/26/05
77	Draft PGD	0 days	Mon 8/29/05	Mon 8/29/05
78	Review	0 days	Wed 8/31/05	Wed 8/31/05
79	Revise	0 days	Thu 9/1/05	Thu 9/1/05



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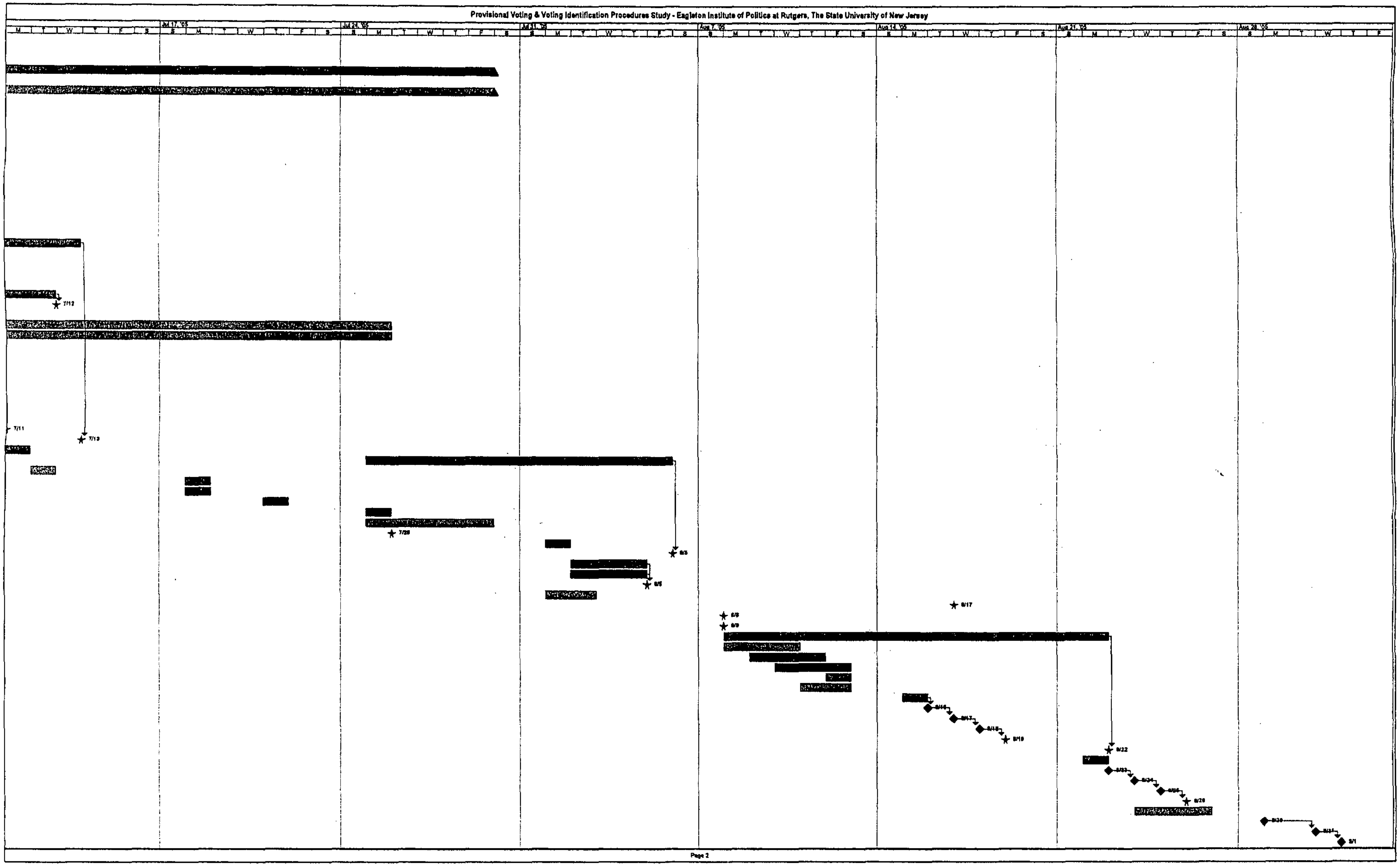
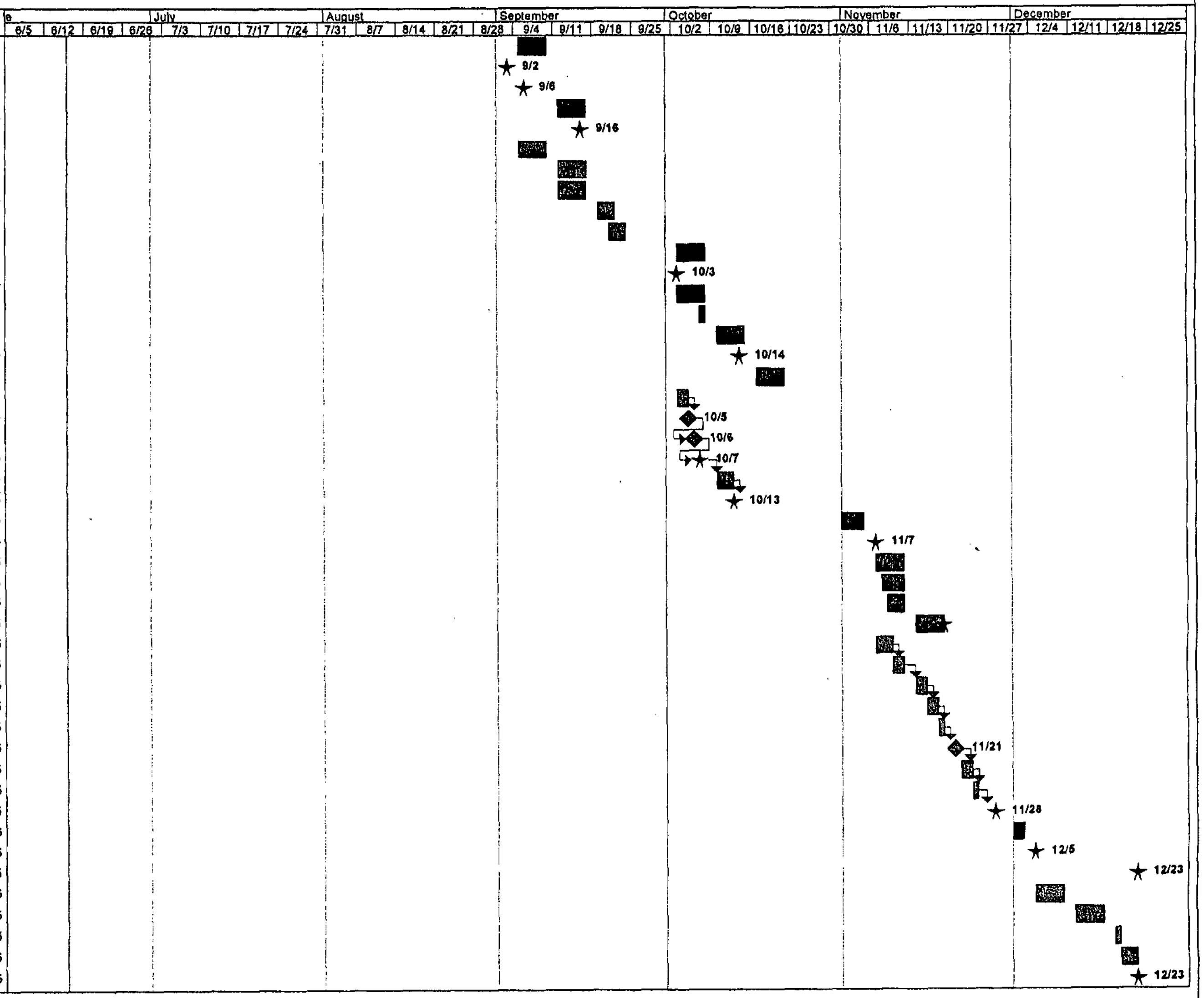


Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

ID	Task Name	Duration	Start	Finish
1	Status reports for August tasks	5 days?	Mon 9/5/05	Fri 9/9/05
2	August Progress Report to EAC	0 days	Fri 9/2/05	Fri 9/2/05
3	Draft PGD to EAC for review	0 days	Tue 9/6/05	Tue 9/6/05
4	Receive EAC commnets; revise	5 days?	Mon 9/12/05	Fri 9/16/05
5	Submit Draft GD to EAC BOA & SB	0 days	Fri 9/16/05	Fri 9/16/05
6	Draft Analysis & Alts. Report	5 days?	Mon 9/5/05	Fri 9/9/05
7	Complete Compendium	5 days?	Mon 9/12/05	Fri 9/16/05
8	Arrange December Public Hearing	5 days?	Mon 9/12/05	Fri 9/16/05
9	Review draft report	3 days?	Mon 9/19/05	Wed 9/21/05
10	Revise draft report	3 days?	Wed 9/21/05	Fri 9/23/05
11	Status reports for Septemeber tasks	5 days?	Mon 10/3/05	Fri 10/7/05
12	September Progress Report to EAC	0 days	Mon 10/3/05	Mon 10/3/05
13	Meet EAC BOA/SB	5 days?	Mon 10/3/05	Fri 10/7/05
14	Revise GD	1 day?	Fri 10/7/05	Fri 10/7/05
15	Draft GD to EAC for publication	5 days?	Mon 10/10/05	Fri 10/14/05
16	Publication	0 days	Fri 10/14/05	Fri 10/14/05
17	Public Hearing on GD	5 days?	Mon 10/17/05	Fri 10/21/05
18	Report Analysis & Alts. To PRG	2 days?	Mon 10/3/05	Tue 10/4/05
19	PRG Comments	0 days	Wed 10/5/05	Wed 10/5/05
20	Revise	0 days	Thu 10/6/05	Thu 10/6/05
21	Submit draft to EAC	0 days	Fri 10/7/05	Fri 10/7/05
22	Revise	3 days?	Mon 10/10/05	Wed 10/12/05
23	Report, Alts., & Compendium to EAC	0 days	Thu 10/13/05	Thu 10/13/05
24	Status reports for October tasks	4 days?	Tue 11/1/05	Fri 11/4/05
25	October Progress Report to EAC	0 days	Mon 11/7/05	Mon 11/7/05
26	Hearing Summary	5 days?	Mon 11/7/05	Fri 11/11/05
27	Analysis of Comments	4 days?	Tue 11/8/05	Fri 11/11/05
28	Revise Guidance Document	3 days?	Wed 11/9/05	Fri 11/11/05
29	Final Guidance to EAC for adoption	5 days?	Mon 11/14/05	Fri 11/18/05
30	Draft PGD	3 days?	Mon 11/7/05	Wed 11/9/05
31	Review draft	2 days?	Thu 11/10/05	Fri 11/11/05
32	Draft PGD to EAC for review	2 days?	Mon 11/14/05	Tue 11/15/05
33	Revise	2 days?	Wed 11/16/05	Thu 11/17/05
34	PGD to BOA	1 day?	Fri 11/18/05	Fri 11/18/05
35	Meet EAC, BOA/SB	0 days	Mon 11/21/05	Mon 11/21/05
36	Revise Draft GD	2 days?	Tue 11/22/05	Wed 11/23/05
37	Draft GD to EAC	1 day?	Thu 11/24/05	Thu 11/24/05
38	Publication	0 days	Mon 11/28/05	Mon 11/28/05
39	Status reports for November tasks	2 days?	Thu 12/1/05	Fri 12/2/05
40	November Progress Reports to EAC	0 days	Mon 12/5/05	Mon 12/5/05
41	Final Reports to EAC	0 days	Fri 12/23/05	Fri 12/23/05
42	Public Hearing	5 days?	Mon 12/5/05	Fri 12/9/05
43	Hearing Summary	5 days?	Mon 12/12/05	Fri 12/16/05
44	Analysis of comments	1 day?	Mon 12/19/05	Mon 12/19/05
45	Revise Guidance Document	3 days?	Tue 12/20/05	Thu 12/22/05
46	EAC revises and adopts Final GD	0 days	Fri 12/23/05	Fri 12/23/05



Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:21 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Eagleton draft press release

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:20 AM -----

Gracia Hillman/EAC/GOV
06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV
cc Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV, Juliet E. Thompson/EAC/GOV, "Tom Wilkey" [redacted]
Subject Re: Eagleton draft press release

I have some concerns about the press release. In paragraph two, I am not comfortable with the following language in what I believe is paragraph two: Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006.

It seems to me that EAC will develop the guidance based on Eagleton's findings.

Also, I do not think the press release should contain the list of questions. Are they/we trying to float a trial balloon and elicit initial reaction at this early stage of the study??

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Jeannie Layson
Sent: 06/10/2005 12:57 PM
To: Gracia Hillman; Raymundo Martinez; Paul DeGregorio
Cc: Karen Lynn-Dyson; Carol Paquette; Juliet Thompson
Subject: Eagleton draft press release

Commissioners,
Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

Deliberative Process
Privilege

DRAFT FOR APPROVAL

EAGLETON INSTITUTE OF POLITICS WINS $560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION

Rutgers Institute to Study Provisional Voting, Voter Identification Procedures

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a $560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security. Questions include:

- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?

- Did local procedures reflect the state's uniform procedures?
- Did all states and election jurisdictions make these procedures available to the public, political parties and candidates before the election?

- To what extent were poll workers appropriately trained on how to administer provisional ballots, including establishing the identity of the potential voter seeking a provisional ballot?

- How were federal funds under the Help America Vote Act used to educate voters about their rights to cast a provisional ballot and where such provisional ballots must be cast to be counted?

- In states where a provisional ballot had to be cast at the voter's assigned polling place or precinct, was information available to poll workers to allow them to determine the voter's assigned precinct and polling place?

- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.
At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of alternatives to existing practices and procedures.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:57 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Voter ID Report and Appendices

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:55 AM -----

"Tom O'neill"
<[redacted]
05/17/2006 09:25 AM

To klynndyson@eac.gov
cc tokaji.1@osu.edu, foley.33@osu.edu, [redacted]Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "'Johanna Dobrich'" <jdobrich@eden.rutgers.edu>
Subject Voter ID Report and Appendices

Karen,

Attached for review by the Commissioners is the Voter ID Report and its appendices. The appendices are lengthy, but I believe Appendix A should be included in the report sent to the Advisory Boards for review.

Thanks for your forbearance.

Tom O'Neill

Appendices517.doc VoterIDReport05170910.doc

HvonSpakovsky@fec.gov
04/11/2007 11:35 AM

To chunter@eac.gov
cc
bcc
Subject Fw: Voter ID and turnout

----- Forwarded by Hans von Spakovsky/FEC/US on 04/11/2007 11:35 AM -----
John Lott <johnrlott@aol.com>

04/10/2007 09:00 PM

To HvonSpakovsky@fec.gov
cc
Subject Re: Voter ID and turnout

One option is why don't you have me or someone else who is doing research on voter ID debate them in a forum before the commission. As you know, I already have a study done on this issue and would happy to do it almost as soon as you wanted to set something up. I agree that unless you look at data over time you can't tell anything about the effect of the regulations.

On Apr 10, 2007, at Tuesday, April 10, 3:35 PM, HvonSpakovsky@fec.gov wrote:

John,

have you seen the controversy over the release of a study done under contract for the U.S. Election Assistance Commission on voter ID and turnout? Here is the link to the press release that the EAC put out about the voter ID study: http://www.eac.gov/news_033007.asp.

Basically, the EAC awarded the contract to individuals who had lots of prior writings indicating their opposition to any voter ID requirements. When they did the study, it apparently didn't come out showing what they wanted it to show, so they recast the numbers to come to the conclusion they wanted. The methodology they used is completely flawed, the most obvious problem being that they only looked at one election year and then compared the turnout in different states, completely failing to take into account the fact that different states have different turnout rates as a matter of historical and cultural trends. Comparing a state in the West that traditionally has very high turnout to a state in the South like Georgia that traditionally has much lower turnout to prove that Georgia's voter ID law must lower turnout is problematic when you don't look at or review longer term turnout trends in each state, particularly before and after an ID requirement is implemented.

The point of my sending you this is that I think this study would be a great opportunity for you to do what you are very good at - analyzing the methodology used by the authors and pointing out its flaws. Apparently, there was a peer review conducted by some academics for the EAC who orally told the EAC that study was flawed.

This study is now being trumpeted as proof that voter ID hurts turnout, and if it is a flawed study, someone with your kind of reputation needs to point that out. If you are interested in doing this, Caroline Hunter, one of the new commissioners at the EAC, would be happy to provide you with whatever information you might need.

Hans A. von Spakovsky
Commissioner
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463
Tel. (202) 694-1011
Fax (202) 219-8493

=

Peer Review Group

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

R. Michael Alvarez
Professor of Political Science
California Institute of Technology

John C. Harrison
Massee Professor of Law
University of Virginia School of Law

Martha E. Kropf
Assistant Professor Political Science
University of Missouri-Kansas City

Daniel H. Lowenstein
Professor of Law, School of Law
University of California at Los Angeles

Timothy G. O'Rourke
Dean, Fulton School of Liberal Arts
Salisbury University

Bradley Smith
Professor of Law
Capital University Law School

Tim Storey
Program Principal
National Conference of State Legislatures

Peter G. Verniero
former Attorney General, State of New Jersey
Counsel, Sills, Cummis, Epstein and Gross, PC

Bryan Whitener/EAC/GOV
03/30/2007 02:40 PM

To
cc
bcc Caroline C. Hunter/EAC/GOV
Subject EAC to Launch Comprehensive Study of Voter ID Laws, 3-30-07

For Immediate Release
March 30, 2007

Contact:
Jeannie Layson
Bryan Whitener
(202) 566-3100

EAC to Launch Comprehensive Study of Voter ID Laws

WASHINGTON - The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws after concluding that initial research it received in a report, which focused on only one election cycle, was not sufficient to draw any conclusions. The Commission declined to adopt the report, but is releasing all of the data to the public.

The report and the research, conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, are available at www.eac.gov. The Commission's statement regarding its decision is attached.

"After careful consideration of the initial research, the Commission decided this important issue deserves a more in-depth research approach, and that it should be examined beyond only one election cycle," said EAC Chair Donetta Davidson. "The Commission and our contractor agree that the research conducted for EAC raises more questions than provides answers."

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting, including the agenda, transcript, and testimony go to http://www.eac.gov/Public_Meeting_020807.asp.

EAC's future research on this topic will be expanded to include more than one federal election, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

* Conduct an ongoing state-by-state review, reporting and tracking of voter identification

requirements.

* Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation. EAC will use some of the information collected by the contractor as well as additional data from the states to develop this baseline.

* In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification.

* Study how voter identification provisions that have been in place for two or more federal elections have impacted voter turnout, voter registration figures, and fraud.

* Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

# # #

EAC Statement on Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election - November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document* was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates* and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.*

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Declines to Adopt Draft Report

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.* Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

*1 In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

*2 The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

*3 The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

*4 See Transcript of EAC Public Meeting, February 8, 2007, page 109.

Further EAC Study on Voter Identification Requirements

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

* Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

* Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

* In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

* Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

* Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

###

Jeannie Layson/EAC/GOV
03/30/2007 02:04 PM

To ddavidson@eac.gov, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov
bcc
Subject Voter ID update

Commissioners,
The press release, the statement, and the draft report has been posted on our site. The press release is being distributed, and is on the way to all of you and the entire EAC staff. The following activities have occurred:

1. Press release was sent in advance to Eagleton.
2. I called Wendy Weiser of the Brennan Center and sent her the info.
3. I called and sent the info to Ray M. and Paul D.
4. I sent the info to Tom Hicks and Adam A.
5. Tom called Dan Tokaji, Dan Oak, and Rep. Hinchey's office.
6. Karen gave the three EAC experts a heads up.
7. Comm. Rodriguez was interviewed by NPR (the only outlet that showed any interest), as was Eagleton. Eagleton told NPR they are glad we are expanding the scope. Interview will run on affiliates today at approximately 5:44 pm EST.
8. I offered interviews to USA Today, WaPo, NYT, and AP but none were interested.
9. I have kept Eagleton apprised of our activities.

I'll continue to keep you apprised as the day goes on, and please let me know if there's anyone else you'd like me to contact.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Thomas R. Wilkey/EAC/GOV
03/29/2007 11:52 AM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie
bcc
Subject Withdrawl of Tally Vote Memo of March 28, 2007, Draft Study Of Voter Identification Requirements

Commissioners;
The tally vote memo issued on March 28, 2007 concerning the Draft Study of Identification Requirements is hereby withdrawn.
A new memo will be re-issued to you shortly.
Tom Wilkey

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov

Thomas R. Wilkey/EAC/GOV
03/28/2007 12:11 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc DeAnna M. Smith/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Tally Vote on Voter Identification Draft Report

Commissioners;
Please be advised that I am withdrawing the Tally Vote on the Voter Identification Draft Report which closes at 1PM today.
The Tally Vote memo will be re-issued later this afternoon and will close within 48 Hours after issuing.
Tom Wilkey

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov

"Rosemary Rodriguez" <rosemaryrod2003@yahoo.com>

03/27/2007 02:20 PM

To jlayson@eac.gov, ddavidson@eac.gov, chunter@eac.gov, ghillman@eac.gov, rrodriguez@eac.gov

cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov, bwhitener@eac.gov, ekuala@eac.gov, [redacted], sbanks@eac.gov,

bcc

Subject Re: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

I think we should be prepared to answer a question that may go something like: *What are your specific objections/concerns with the methodologies utilized by Eagleton?*

----- Original Message ----

From: "jlayson@eac.gov" <jlayson@eac.gov>

To: ddavidson@eac.gov; rosemaryrod2003@yahoo.com; chunter@eac.gov; ghillman@eac.gov

Cc: twilkey@eac.gov; klynndyson@eac.gov; jthompson@eac.gov; bwhitener@eac.gov; ekuala@eac.gov; stephanie.wolson@gmail.com; sbanks@eac.gov; bbenavides@eac.gov

Sent: Tuesday, March 27, 2007 2:02:01 PM

Subject: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,

I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the $500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Jeannie Layson/EAC/GOV
03/27/2007 02:02 PM

To ddavidson@eac.gov, [redacted]
Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov,
jthompson@eac.gov, bwhitener@eac.gov, Elieen L.
Kuala/EAC/GOV@EAC, stephanie.wolson@gmail.com,
bcc
Subject FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,
I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the $500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

VoterIDRollOutProposal REV.doc

VoterIDTallyVotePRDRAFT3-27.doc

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Deliberative Process Privilege

ELECTION ASSISTANCE COMMISSION
UNITED STATES OF AMERICA

March 27, 2007

MEMORANDUM

To: Commissioners Davidson, Rodriguez, Hunter and Hillman
Fr: Jeannie Layson
Cc: Tom Wilkey, Julie Hodgkins, Karen Lynn-Dyson, Bryan Whitener
RE: Communications Strategy for Release of Voter ID Tally Vote Results

In anticipation of the release of the results of the tally vote and all of the information provided by the contractor, I suggest taking the following steps to effectively communicate your decision. Taking this approach will help us control how the information is distributed, how it is framed, and how to focus the discussion on the positive outcome of your decision.

The bottom line is that we want to try our best to make this a story about EAC's decision to conduct a thorough and in-depth look into the subject of voter ID, and we have decided to release the preliminary research. We do not want this to evolve into a storyline about squabbling between EAC and Eagleton.

I have provided a suggested overall message that reflects the action taken, as well as questions we should be prepared to answer.

Please let me know if you have any questions about my proposal, and I look forward to your input.

PRELIMINARY ACTIVIES

Prior to the completion of the tally vote and the subsequent release of the results and the contractor's materials, I suggest taking the following steps:

1. Discuss EAC's decision with the contractors in advance of distributing the press release and discussions with reporters so that they have an opportunity to respond and also so they will be well informed and prepared to discuss the facts with reporters or others who will most likely contact them.
2. Prior to release of EAC's decision, reach out to key Hill staffers who have been following this issue, including those members who have requested this data in the past. This should include staffers for the House Appropriations Committee Subcommittee on Financial Services and General Government since the Committee requested this information a few weeks ago. It should be made clear to committee staffers that the tally vote is the culmination of a directive made by the EAC chair in Feb. that the agency move forward to complete this project. These staffers should also be included on our list of key stakeholders.
3. Executive director should determine whether there are other key stakeholders that should be made aware of this decision from EAC personally, not from a press release. Possible candidates include members of Congress, NASS, individual secretaries of state, DOJ, and NASED.

PUBLIC ROLL-OUT

Once the above preliminary steps have been completed, EAC Communications will:

1. Post the press release and the related data on the website, with a link from the home page.
2. Prior to release of the tally vote decision and related data, call Richard Whitt of USA Today, Will Lester of AP, Chris Drew of the NYT, and Zach Goldfarb of the WaPo and let them know we are about to release the information. Offer interviews with the chair or other commissioners.
3. Send the press release (with a link to the research) to all recipients in the media database. This includes national dailies, as well as wire services such as the Associated Press.
4. Send the press release (with a link to the research) to all recipients in the stakeholder database. The database consists of election officials, advocates, and other interested parties, including representatives from organizations who have been critical of EAC, including VoteTrust USA and the People for the American Way.

OVERALL MESSAGE

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, was insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors including, the many changes in state laws and regulations that have occurred since the 2004.

Q&A

We should be prepared to answer the following questions:

Q: Why not release the draft fraud report, too?
A: EAC issued a final Voting Fraud and Voter Intimidation Report in December 2006, which included recommendations adopted by the Commission to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

In the case of the voter ID report, the Commission chose not to adopt a final report because it was determined that there was insufficient data to provide meaningful conclusions.

Q: You cited concerns with the contractor's methodology and analysis. Didn't your contract with Eagleton include specific language regarding these issues?
A: Yes, but in retrospect, perhaps we could have done a better job articulating how we wanted this research to be conducted.

Q: During the course of the project, did you see draft reports? If so, why didn't these concerns get addressed at that time?
A: We did receive progress reports, and when we identified areas of concern, we discussed it with the contractor. It was because of these concerns that EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: During the course of the contract, did you ever express these concerns with Eagleton?
A: Yes, and as a result of these conversations, EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: You spent more than $500,000 for a report the Commission doesn't think should be adopted – so basically you're flushing a lot of money down the drain. Is this a wise use of taxpayer dollars?
A: There is value in what Eagleton provided, and this included work they did for us regarding provisional voting. As a result of the research on provisional voting, EAC

issued a set of best practices last fall. The voter ID data will help provide a baseline for how to move forward. And even though their research raised many questions, contemplating the answers to those questions has informed us on how to move forward.

Q: If you were not satisfied with the final product, why did you pay for it?
A: We adhered to the terms of the contract.

Q: EAC received this data in June of last year. What has taken so long to bring it to a conclusion?
A: This is an important issue, one that deserves careful deliberation and a thorough approach. Yes, we like to get things done quickly, but it is more important to take the time to get things right.

TRANSITION PHRASES

To stay on message and avoid being dragged into discussions about anything other than the action taken, employ the following phrases and transition back to the overall message.

Overall Message

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, were insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors, including the many changes in state laws and regulations that have occurred since 2004.

Bridge/Transition Phrases

- What's really important here...
- The bottom line is...
- The point is...
- We have a responsibility to...
- I'll let others speak to that, but let me tell you what's important to EAC...
- Everyone agrees that...

Deliberative Process
Privilege

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

EAC to Launch Comprehensive Study of Voter ID Laws

For Immediate Release
DATE, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws. The initial research on voter identification laws are available at www.eac.gov, but because this research focused exclusively on the 2004 general elections, included populations that are not eligible to vote, and did not take into account influential factors such as the competitiveness of campaigns, it was insufficient to provide meaningful conclusions and thus the Commission declined to adopt a report based on it.

"New voter identification laws have been enacted recently, and the Commission began working to determine the possible impact of these new laws," said EAC Chair Donetta Davidson. "After careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle. The bottom line is that the research raises more questions than provides answers.

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007, public meeting. For more information about the public meeting agenda, transcript and testimony go to http://www.eac.gov/Public_Meeting_020807.asp.

EAC's future research on this topic will be expanded to include more than one election cycle and to examine environmental and political factors and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements that require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identity.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information already collected as well as additional data from the states to develop this baseline.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

# # #

"Rosemary Rodriguez"
[redacted]
03/19/2007 10:56 AM

To jhodgkins@eac.gov, "Davidson, Donetta" <ddavidson@eac.gov>, ghillman@eac.gov, chunter@eac.gov
cc twilkey@eac.gov, jlayson@eac.gov, klynndyson@eac.gov
bcc
Subject Re: Revised Voter ID statement with Eagleton comments to paragraph 2

Several thoughts on formatting:

Does the title of the document still work?

I still think that the two paragraphs, the one that precedes the Julie paragraph and the one that follows, should be set apart and titled "conclusion" or "finding" or something that recognizes it was the subject of an action by the EAC.

and then i ask if the title of the next section still works--do we make recommendations to ourselves?

----- Original Message ----
From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>
To: "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov; chunter@eac.gov; rosemaryrod2003@yahoo.com
Cc: twilkey@eac.gov; jlayson@eac.gov; klynndyson@eac.gov
Sent: Friday, March 16, 2007 4:27:32 PM
Subject: Revised Voter ID statement with Eagleton comments to paragraph 2

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV
03/16/2007 02:29 PM

To john.weingart@rutgers.edu
cc "Tom O'Neill" <[redacted], twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC
bcc Caroline C. Hunter/EAC/GOV
Subject Re:Review of Voter ID Statement

John-

EAC staff has asked when we can expect your approval of the statement which I sent several days ago and asked for by COB today.

As I am leaving the office early today, could you be certain that Tom Wilkey and Julie Hodgkins are sent your response, as well as myself?

Thanks
Karen

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Juliet E. Hodgkins/EAC/GOV
03/16/2007 01:39 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc
bcc
Subject Re: Voter ID statement

History: This message has been replied to.

I don't know the status of Eagleton's review of that paragraph, but I will check on it.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV
03/16/2007 11:43 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, [redacted]
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, [redacted]
Subject Re: Voter ID statement

This looks good to me, thank you Julie. Two things- did Eagleton approve the 2nd graph and I made a minor change to the 4th bullet as a point of clarification.

Juliet E. Hodgkins

----- Original Message -----

From: Juliet E. Hodgkins
Sent: 03/16/2007 09:41 AM EDT
To: Donetta Davidson; Gracia Hillman; Caroline Hunter; rosemaryrod2003@yahoo.com
Cc: Thomas Wilkey; Jeannie Layson
Subject: Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Caroline C. Hunter/EAC/GOV]
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Caroline C. Hunter/EAC/GOV]

Juliet Thompson Hodgkins

General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV
03/14/2007 05:46 PM

To John.Weingart@rutgers.edu
cc [redacted]
bcc Caroline C. Hunter/EAC/GOV
Subject Re: EAC Statement on its future study of Voter ID requirements

John and Tom-

EAC staff are putting the finishing touches on the statement and data it will be releasing, in the next several days, related to voter identification study.

In our brief statement we will be summarizing what Rutgers/Eagleton did when performing its statistical analysis.

Could you review the following statement for accuracy and send me any revisions and edits to it by Friday March 16, 2007?

" The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The Contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election- November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign his or her name in order to receive a ballot. The Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates 1 and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau2 "

Footnotes:

1 The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population includes persons who are not registered to vote.

2. The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S citizens.

Thanks for your feedback

Regards

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Juliet E. Hodgkins/EAC/GOV
03/13/2007 06:06 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, [redacted]
cc Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Edited version of the Voter ID statement

Commissioners,

I intended to get this out to you much earlier today, but the day got away from me. After our hearing last week before the House Appropriations Subcommittee and the requests that were made for the draft reports of the Eagleton and Voter Fraud studies, I think that we must take a different approach to addressing the quality of these reports. While it may or may not be our intention to release these documents publicly, we MUST respond to the request made from a Congressional Committee and cannot use FOIA exemptions as FOIA does not apply to them. I believe that it is safe to assume that if we provide these documents to the Committee, even with a letter explaining their predecisional nature, that these documents will be released into the public spectrum. As such, I feel that EAC needs to make a statement regarding the quality of these reports and why we are making (or have made) a decision not to adopt the draft reports that were produced by our contractors.

Thus, I edited the statement that Karen produced with comments that reflect why we will not adopt the Eagleton report. That document is attached below. I would suggest that we put similar statements regarding Eagleton's report and the Voter Fraud draft report into a letter that I am drafting to go to the Committee with the requested documents. I will edit that letter to include similar comments tonight/tomorrow morning and will circulate it to you.

Please let me know if you have any questions, concerns, comments, etc.

Voter ID edited.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Karen Lynn-Dyson/EAC/GOV
03/13/2007 04:42 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc
bcc
Subject Re: Latest draft of the EAC Voter ID statement

History: This message has been replied to.

Thanks Commissioner. I will restart the review process when I return to the office tommorrow

----
Sent from my BlackBerry Wireless Handheld
Caroline C. Hunter
----- Original Message -----

From: Caroline C. Hunter
Sent: 03/13/2007 04:36 PM EDT
To: Karen Lynn-Dyson
Cc: Donetta Davidson; Gracia Hillman; Jeannie Layson; Juliet Hodgkins; [redacted] Thomas Wilkey; [redacted]
Subject: Re: Latest draft of the EAC Voter ID statement

Attached, please find my edits. My intention was to try to explain in English how the Contractor conducted the study in the 2nd graph of the background statement. I realize I left some information out; for example, how he ran the numbers based on maximum and minimum id requirements. I am open to any suggestions on how to better describe what they did; however, despite reading the report and Appendix C many times, I am still do not understand exactly how the study was conducted. I think we should run the 2nd graph by the Contractor to ensure its accuracy.

[attachment "VoterID Hunter edits.doc" deleted by Karen Lynn-Dyson/EAC/GOV]

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
03/09/2007 05:20 PM

To Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, [redacted]
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov
Subject Latest draft of the EAC Voter ID statement

Commissioners-

Commissioner Hunter noted that several changes to the draft that she had recommended were not included in the latest draft that I sent to Julie and Jeannie. had.

Attached please find this new version which I hope accurately reflects her suggestions; we are asking that everyone take a look at this version.

Please get me your comments and recommended edits by Monday.

Thanks-

[attachment "Voter ID Statement March 9.doc" deleted by Karen Lynn-Dyson/EAC/GOV]

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
03/09/2007 05:20 PM

To Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, [redacted]
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov
bcc
Subject Latest draft of the EAC Voter ID statement

History: This message has been replied to.

Commissioners-

Commissioner Hunter noted that several changes to the draft that she had recommended were not included in the latest draft that I sent to Julie and Jeannie. had.

Attached please find this new version which I hope accurately reflects her suggestions; we are asking that everyone take a look at this version.

Please get me your comments and recommended edits by Monday.

Thanks-

Voter ID Statement March 9.doc

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Deliberative Process
Privilege

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation in turnout rates based on the type of voter identification requirements. EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the report.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Juliet E. Hodgkins/EAC/GOV
03/08/2007 04:35 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc jlayson@eac.gov, Gracia Hillman/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, Caroline C. Hunter/EAC/GOV@EAC, [redacted]
bcc
Subject Re: Final EAC statement on Voter ID report

History: This message has been forwarded.

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

Voter ID statement jth edits.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
cc
Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

Final EAC Voter ID Statement.doc

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

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The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

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The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

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EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important first step in the Commission's consideration of voter identification requirements.

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However, EAC has concerns regarding the research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements. Therefore, EAC is not adopting the Contractor's full report that was submitted and is not releasing this report

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EAC will engage in a longer-term, more systematic review of voter identification requirements and the potential variation in turnout rates based on the types of voter identification requirements. EAC's additional study on the topic will include more than one Federal election cycle, examine additional environmental and political factors that effect voter participation, and consider the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

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- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

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- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

Deleted: Using some of the information collected by Eagleton and assembling data from states, EAC will e

- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study, research and statistical methodologies to be employed and timelines for completing an EAC study on voter identification.

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- Study how certain voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

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- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

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- Track state policies and procedures for early voting, absentee voting, and vote-by-mail. The data collected through this tracking will then be compared to various state voter identification policies and procedures.

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Karen Lynn-Dyson/EAC/GOV
03/06/2007 05:15 PM

To "Rosemary Rodriguez" [redacted]
cc Donetta L. Davidson/EAC/GOV@EAC, Caroline C. twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
bcc
Subject Close-to-final draft of Voter ID statement

Commissioners-

Attached please find the draft statement on voter ID requirement in which I have attempted to incorporate your suggested changes. Those changes are highlighted in yellow and bolded.

You'll want to pay particular attention to the options for the third paragraph in which I have offered two choices:

One choice allows you to release all of Eagleton's documents, including the testimony, the 32-page report and the statistical analysis(Appendix C).
The second choice only includes the testimony and does not include the 32 page summary or the data analysis (Appendix C).

Once you have reached a consensus on one of the choices, I'll ask Jeannie to take a close look at grammar and syntax.

Thanks

New EAC Voter ID Report.doc
Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Norcross,David A." <Norcross@BlankRome.com>
04/05/2007 02:16 PM

To chunter@eac.gov
cc
bcc
Subject RE: Eagleton Voter ID study

Thanks for sending the Voter ID Study. I have always viewed Eagleton with suspicion. In my mind they do not have a particularly good track record; I admit that my view is entirely anecdotal and perhaps partisan but suffice it to say I am in no way surprised.

David A. Norcross | Partner/Senior Principal | Blank Rome LLP
Blank Rome Government Relations LLC
600 New Hampshire Ave. NW | Washington, DC 20037
Phone: (202)772-5874 | Fax: (202)772-5876 | [redacted]

From: chunter@eac.gov [mailto:chunter@eac.gov]
Sent: Friday, March 30, 2007 1:56 PM
To: chunter@eac.gov
Subject: Eagleton Voter ID study

FYI - The EAC just released the attached press release and statement on a study submitted to the EAC from Rutger's Eagleton Institute of Politics.
The EAC voted to release all of the research submitted by Eagleton; however, the EAC did not adopt the report.

In my opinion, the methodology used by Eagleton is flawed and none of the information submitted is useful in any way. It is difficult to determine exactly what Eagleton did to come to their conclusions.

As noted in the attached statement, Eagleton "compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election - November 2004." Eagleton analyzed Census Bureau voting age population data and found no statistically significant correlation between ID requirements and turnout. So Eagleton then used data from the Current Population Survey (self reported) and found a "significant effect" on turnout. Eagleton concluded, for example, that based on the survey data, "the predicted probability that Hispanics would vote in states that required non-photo identification [NOT a photo ID] was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African Americans and Asian Americans, and about 2 percent for white voters."

A draft summary of this report was released by the EAC in early February. At that time, several press outlets, including NYT and USA Today, reported that the study shows a chilling effect on turnout in states with voter ID, particularly on minorities. The methodology is so flawed that no reasonable conclusion should be drawn, however, this "conclusion" reported by the press is based on comparing self reported turnout data from the U.S. Census Current Population Survey between states for ONE election year. It is hard to imagine that anyone who reads the report or even the EAC statement, which includes a summary of the methodogy used by Eagleton, will find the study useful.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Caroline C. Hunter
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chunter@eac.gov
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Bryan Whitener/EAC/GOV
05/04/2007 02:55 PM

To Stephanie Wolson/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
bcc
Subject Fw: EAC statement on study of voter ID requirements

FYI, also sent her the following subsequent email to point out EAC's statement accompanying the eagleton report.

----- Forwarded by Bryan Whitener/EAC/GOV on 05/04/2007 02:52 PM -----

Bryan Whitener/EAC/GOV
04/30/2007 06:35 PM

To "Dana Burke" [redacted]
cc Jeannie Layson/EAC/GOV@EAC
Subject EAC statement on study of voter ID requirements

Dana,

I also meant to point out that EAC issued a statement regarding the study on voter ID requirements . The entire statement is contained within the news release here.

News Release: 3/30/07 - EAC to Launch Comprehensive Study of Voter ID Laws

Please do not hesitate to contact us if we can be of assistance.

Bryan Whitener
U.S. Election Assistance Commission
(202) 566-3118
(866) 747-1471 (toll free)

----- Forwarded by Bryan Whitener/EAC/GOV on 04/30/2007 06:30 PM -----

Bryan Whitener/EAC/GOV
04/30/2007 04:50 PM

To "Dana Burke" [redacted]
cc Jeannie Layson/EAC/GOV@EAC
Subject Re: Bay Area Citizen Question

Dana,

Please see the following two links. Our Inspector General is currently reviewing the circumstances surrounding this research (please see page two on the first link for the memo from EAC Chair Donetta Davidson.) When that process is complete we'll be glad to discuss it further.

04/16/07 - EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects

News Release: 3/30/07 - EAC to Launch Comprehensive Study of Voter ID Laws

Please do not hesitate to contact us if we can be of assistance.

Bryan Whitener
U.S. Election Assistance Commission
(202) 566-3118
(866) 747-1471 (toll free)

"Dana Burke" <dburke@hcnonline.com>

"Dana Burke"
<dburke@hcnonline.com>
04/30/2007 04:22 PM

To bwhitener@eac.gov
cc
Subject Bay Area Citizen Question

Bryan,

I spoke to you on the phone a few minutes ago about a story I am working on regarding voter identification requirements in Texas. Democrats opposed to the new legislation, HB 218 and HB 626, have referred to this study commissioned by the EAC that shows a correlation between more stringent voter id requirements and lower voter turnout, especially among minority groups.

However I saw mention on your Web site that a voter identification study has asked to be reviewed due to complaints. I was not sure if this is the same study. Could you please tell me if this study is being considered valid and whether my above assessment is correct? My deadline is Tuesday, 8 a.m.

Thanks, and have a great day.

Dana Burke
News Editor – The Citizen
100 E. NASA Parkway, Ste. 105
Webster, TX 77598
281-674-1403
832-868-8027 cell
281-332-6901 fax
www.hcnonline.com

Jeannie Layson/EAC/GOV
04/27/2007 04:54 PM

To EAC Personnel
cc
bcc
Subject Voter ID and Vote Fraud and Voter Intimidation IG Review Update

Hello everyone,
The chair wanted to distribute the attached memo from the IG, which contains guidance about how we proceed during the review of the voter ID and the vote fraud and voter intimidation research projects. She will continue to keep staff informed as this review moves forward, and she thanks everyone for their continued cooperation and hard work.

IG Memo to Chair on Review of Studies (4-27-07).pdf

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

April 27, 2007

Memorandum

To: Donetta Davidson
Chair, U.S. Elections Commission

From: Curtis Crider
Inspector General

Subject: U.S. Election Assistance Commission Activities Pending the Office of Inspector General Investigation of the Voting Fraud and Voter Intimidation Report

In your letter of April 23, 2007, you requested my comments concerning several activities that the Election Assistance Commission (EAC) was considering to undertake pending our review of the Voting Fraud and Voter Intimidation Study and on related questions. My responses to your proposed activities and questions follow:

1. The EAC would like to prepare a summary of the differences between the draft report prepared by the consultants and the final report adopted by the EAC.

   Answer: We believe that such a summary will be helpful to our investigation. Please provide us with a copy of the summary of differences upon it is completion.

2. Would there be any prohibition against the Director of Communications speaking with EAC employees, consultants or working group members when questions arise from members of the press or under the Freedom of Information Act?

   Answer: We are not aware of any prohibition. However, we suggest that EAC not comment or limit its comments on this matter because of the ongoing investigation. Any FOIA requests should be promptly responded to stating that the matter is under investigation. Once the investigation is completed, appropriate information should be made available to the FOIA requester.

3. Would there be any prohibition against EAC briefing members of the EAC Standards Board and the EAC Board of Advisors.

   Answer: We are not aware of any prohibition. Our preference, however, would be that EAC allow the investigation to be completed before conducting any briefings.

4. Would there be any prohibition against gathering information related to this project in order to respond to inquiries that have been made by members of Congress?

Answer: We are not aware of any prohibition. As previously stated, our preference is that there are no public comments while the investigation is in process or that comments be limited. However, we appreciate the sensitivity of Congressional requests, EAC must decide how best to proceed in this matter. We ask that you share any proposed responses with us prior to their release and that you provide us with a copy of final responses and any attachments.

5. Would there be any prohibition against responding to an inquiry that the Commission has received from an attorney engaged by one of the consultants?

   Answer: It is the EAC's decision whether to respond to the attorney for the consultant. We prefer that the consultants not be released from the confidentiality clause of ther contracts until the OIG has completed its investigations.

We understand that EAC will want to respond to criticism of its handling of the Voter Fraud and Intimidation Study, and that management must ultimately decide how best to proceed. Our preference would be that you attempt to defer commenting until we have finished our investigation.

I appreciate you raising these matters to me before acting. Please feel free to contact me if you have any questions about this memorandum.

"Bryan Whitener" <bwhitener@eac.gov>
04/16/2007 03:38 PM
Please respond to bwhitener@eac.gov

To chunter@eac.gov
cc
bcc
Subject EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects, 04-16-07

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

For Immediate Release
April 16, 2007

Contact:
Jeannie Layson
Bryan Whitener
(202) 566-3100

EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects

WASHINGTON - U.S. Election Assistance Commission (EAC) Chair Donetta Davidson today issued a formal request to the commission's inspector general to conduct a review of the commission's contracting procedures, including a review of two recent projects focusing on voter identification and vote fraud and voter intimidation. The chair's memo to the inspector general is attached (to view the memo and attachments, click **here**).

"The actions taken by the commission regarding these research projects have been challenged, and the commissioners and I agree that it is appropriate and necessary to ask the inspector general to review this matter," said EAC Chair Davidson.

Chair Davidson has requested that the inspector general specifically review the circumstances surrounding the issuance and management of the voter identification research project and the vote fraud and voter intimidation research project.

EAC is an independent bipartisan commission created by HAVA. It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary E. Rodriguez, Caroline Hunter and Gracia Hillman.

###

Bola Olu/EAC/GOV
04/30/2007 03:40 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc
bcc
Subject Re: Fraud study

The overall total for both contractors is $147,106.35 even though the contract was for 2 fiscal years - F05 & FY06.

Bola Olu
Financial Administrative Specialist
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
P:202-566-3124
F:202/566-3127
http://www.eac.gov/

"Don't ask for a blessing - be a blessing. Contribute to a process and help it grow. You can only get ahead by giving back first."

Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV
04/30/2007 03:30 PM

To Bola Olu/EAC/GOV@EAC
cc Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie Wolson/EAC/GOV@EAC
Subject Re: Fraud study

Thank you, Bola.
I added the four numbers listed as expended and got - $147,106.35
Is that correct?

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Bola Olu/EAC/GOV

Bola Olu/EAC/GOV
04/30/2007 01:26 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc Gracia Hillman/EAC/GOV@EAC, Jeannie

Layson/EAC/GOV@EAC, Karen
Lynn-Dyson/EAC/GOV@EAC, Stephanie
Wolson/EAC/GOV@EAC
Subject Re: Fraud study

Com. Hunter:

Please find attached a spreadsheet containing information for both Wang & Serebrov. This spreadsheet lists invoices received from both individuals and these invoices were subsequently paid by US Treasury. Please let me know if I can be of further assistance.

WANG & SEREBROV.xls

Bola Olu
Financial Administrative Specialist
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
P:202-566-3124
F:202/566-3127
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Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV
04/30/2007 12:44 PM

To Bola Olu/EAC/GOV@EAC
cc Gracia Hillman/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie Wolson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
Subject Fraud study

Bola,
Could you please let me know the total amount the EAC paid the contractors (Wang and Serebrov) for the fruad report.
Thank you,
Caroline

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107

chunter@eac.gov
www.eac.gov

RUTGERS/EAGLETON

	Beginning balance FY05	**$560,002**	
	No-cost amend FY06	**$0**	
9/29/2006	E4014127	$49,514.52	
6/7/2006	E4014127	$39,362.63	
3/30/2006	E4014127	$113,249.99	
2/8/2006	E4014127	$59,952.94	
1/13/2006	E4014127	$35,929.36	
11/30/2005	E4014127	$52,474.65	
9/30/2005	E4014127	$103,207.33	
9/20/2005	E4014127	$62,581.46	
8/29/2005	E4014127	$28,175.94	
8/29/2005	E4014127	$12,642.41	
	Expended	**$557,091.23**	
	Available balance	**$2,910.77**	BAL. DEOBLIGATED

Bola Olu/EAC/GOV
04/30/2007 01:32 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie
bcc
Subject Re: Fraud study

Information for Eagleton attached.

Rutgers University - Eagleton contract.xls

Bola Olu
Financial Administrative Specialist
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
P:202-566-3124
F:202/566-3127
http://www.eac.gov/

"Don't ask for a blessing - be a blessing. Contribute to a process and help it grow. You can only get ahead by giving back first."

Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV
04/30/2007 01:07 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc Bola Olu/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie Wolson/EAC/GOV@EAC
Subject Re: Fraud study

Bola,
Could you please provide the same info for the Eagleton contract.
Thank you,
Caroline

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV

04/30/2007 12:44 PM

To Bola Olu/EAC/GOV

cc Gracia Hillman/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie Wolson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC

Subject Fraud study

Bola,
Could you please let me know the total amount the EAC paid the contractors (Wang and Serebrov) for the fruad report.
Thank you,
Caroline

Caroline C. Hunter
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1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Bola Olu/EAC/GOV
04/30/2007 01:26 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie
bcc
Subject Re: Fraud study

History: This message has been replied to.

Com. Hunter:

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WANG & SEREBROV.xls

Bola Olu
Financial Administrative Specialist
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Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV
04/30/2007 12:44 PM

To Bola Olu/EAC/GOV@EAC
cc Gracia Hillman/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie Wolson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
Subject Fraud study

Bola,
Could you please let me know the total amount the EAC paid the contractors (Wang and Serebrov) for the fruad report.
Thank you,
Caroline

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW

Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

TOVA WANG

	Beginning balance FY05	$55,000	
3/27/2006	E4019697	$8,333.33	
3/6/2006	E4019697	$8,333.33	
2/1/2006	E4019697	$8,333.33	
1/2/2006	E4019697	$5,550.00	
1/2/2006	E4019697	$8,333.33	
1/2/2006	E4019697	$8,333.33	
	Expended	$47,216.65	
	Available balance	$7,783.35	BAL. DEOBLIGATED

TOVA WANG

	Beginning balance FY06	$28,423.34	
8/16/2006	E4019904	$2,109.00	
7/7/2006	E4019904	$1,100.00	
7/5/2006	E4019904	$1,533.02	
6/20/2006	E4019904	$3,330.00	
5/24/2006	E4019904	$9,102.00	
4/27/2006	E4019904	$9,102.00	
	Expended	$26,276.02	
	Available balance	$2,147.32	BAL. DEOBLIGATED

[redacted]

JOB SEREBROV

	Beginning balance FY05	$55,000	
3/29/2006	E4019698	$8,333.33	
3/6/2006	E4019698	$8,333.33	
1/31/2006	E4019698	$8,333.33	
1/3/2006	E4019698	$8,333.33	
12/21/2005	E4019698	$7,215.00	
11/23/2005	E4019698	$8,333.33	
	Expended	$48,881.65	
	Available balance	$6,118.35	BAL. DEOBLIGATED

JOB SEREBROV

	Beginning balance FY06	$28,475	
8/11/2006	E4019905	$1,443.00	
7/18/2006	E4019905	$1,110.00	
7/5/2006	E4019905	$1,200.03	
6/20/2006	E4019905	$2,775.00	
5/24/2006	E4019905	$9,102.00	
4/25/2006	E4019905	$9,102.00	
	Expended	$24,732.03	
	Available balance	$3,742.97	BAL. DEOBLIGATED

Caroline C. Hunter/EAC/GOV
04/30/2007 01:07 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc Bola Olu/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie
bcc
Subject Re: Fraud study

Bola,
Could you please provide the same info for the Eagleton contract.
Thank you,
Caroline

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV
04/30/2007 12:44 PM

To Bola Olu/EAC/GOV
cc Gracia Hillman/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Stephanie Wolson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
Subject Fraud study

Bola,
Could you please let me know the total amount the EAC paid the contractors (Wang and Serebrov) for the fruad report.
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Caroline

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1225 New York Avenue, NW
Suite 1100
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(202) 566-3107
chunter@eac.gov
www.eac.gov

Thomas R. Wilkey/EAC/GOV
04/20/2007 12:13 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C.
cc Gavin S. Gilmour/EAC/GOV@EAC
bcc
Subject Re: Fraud Report

I discussed this with Julie last evening and again this morning and agree with her comments.
I believe both the IG review and our reponses to Senator Finesteins letter covers a great deal of what we were asking them to do.

Sent from my BlackBerry Wireless Handheld
Juliet E. Hodgkins
----- Original Message -----

From: Juliet E. Hodgkins
Sent: 04/20/2007 12:14 PM EDT
To: Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey; Margaret Sims; Jeannie Layson
Cc: Gavin Gilmour
Subject: Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

This IG's investigation was requested to address issues of public perception. Thus, it is critical that this investigation proceed in a manner that leaves no room for question. As such, I believe that it is inappropriate to proceed with this request.

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
cc "Jeannie Layson" <jlayson@eac.gov>
Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth

overview of the work you did on this report.
This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.
I will discuss this further with each of you between now and tomorrow.
I have been at the damn conference all day and have not been able to go to a single session or spend time with people.
Thanks
Tom

Sent from my BlackBerry Wireless Handheld

Attorney-Client
Privilege

Juliet E. Hodgkins/EAC/GOV
04/20/2007 12:14 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc Gavin S. Gilmour/EAC/GOV@EAC
bcc
Subject Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

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Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
cc "Jeannie Layson" <jlayson@eac.gov>
Subject Fraud Report

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This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.
I will discuss this further with each of you between now and tomorrow.
I have been at the damn conference all day and have not been able to go to a single session or spend time with people..
Thanks
Tom

Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins/EAC/GOV
04/06/2007 12:11 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc
bcc
Subject Cost of the Voting Fraud and Voter Intimidation Study

Total to the two consultants: $147,106.35

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Rosemary E. Rodriguez/EAC/GOV

03/30/2007 03:23 PM

To ddavidson@eac.gov, Gracia Hillman/EAC/GOV@EAC, chunter@eac.gov

cc TWilkey@eac.gov

bcc

Subject Fw: Fraud Report

Rosemary E. Rodriguez
Commissioner
United States Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, D.C. 20005
Telephone: 202-566-3104
Facsimile: 202-566-3127
www.eac.gov
rrodriguez@eac.gov

----- Forwarded by Rosemary E. Rodriguez/EAC/GOV on 03/30/2007 03:22 PM -----

Rosemary E. Rodriguez/EAC/GOV

03/30/2007 03:20 PM

To DDavidson@useac.gov, GHillman@useac.gov, CHunter@useac.gov

cc TWilkey@useac.gov

Subject Fraud Report

I would very much like to explore the possibility of reconsidering the decision to release the Fraud Report. How can I get this on our agenda?

Rosemary E. Rodriguez
Commissioner
United States Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, D.C. 20005
Telephone: 202-566-3104
Facsimile: 202-566-3127
www.eac.gov
rrodriguez@eac.gov

"Craig Burkhardt"
<cburkhardt@BTLaw.com>
04/02/2007 09:20 AM

To chunter@eac.gov
cc
bcc
Subject Re: Eagleton Voter ID study

History: This message has been replied to.

Dear Caroline:

What a sad use of taxpayer funds. I look forward to your oversight of these matters.

Hope all is well with you at the new office.

Regards,
Craig

Craig S. Burkhardt
BARNES & THORNBURG LLP
Craig.Burkhardt@btlaw.com

In Washington, DC:
750 17th Street, NW, Suite 900
Washington, DC 20006
Phone: (202) 408-6903
Cell: (202) 277-2718
Fax: (202) 289-1330

In Chicago:
One North Wacker, Suite 4400
Chicago, IL 60606-2833
Phone: (312) 214-8802
Fax: (312) 759-5646

"Craig Burkhardt"
<cburkhardt@BTLaw.com>
04/02/2007 08:40 AM

To chunter@eac.gov
cc
bcc
Subject Re: Eagleton Voter ID study

History: This message has been replied to.

Dear Caroline: Thanks for the info. Did the EAC pay for this study?
Regards, Craig

Craig S. Burkhardt
BARNES & THORNBURG LLP
Craig.Burkhardt@btlaw.com

In Washington, DC:
750 17th Street, NW, Suite 900
Washington, DC 20006
Phone: (202) 408-6903
Cell: (202) 277-2718
Fax: (202) 289-1330

In Chicago:
One North Wacker, Suite 4400
Chicago, IL 60606-2833
Phone: (312) 214-8802
Fax: (312) 759-5646

"Doug Lewis"
<dlewis@electioncenter.org>
04/01/2007 07:37 PM

To chunter@eac.gov
cc
bcc
Subject RE: Eagleton Voter ID study

History: This message has been replied to.

We can talk sometime on the phone about this study.

Thank you for the heads up.

R. Doug Lewis
Executive Director
National Association of Election Officials
The Election Center
12543 Westella, Suite 100
Houston, TX 77077-3929
281-293-0101, Voice
281-293-0453, Fax
dlewis@electioncenter.org

From: chunter@eac.gov [mailto:chunter@eac.gov]
Sent: Friday, March 30, 2007 12:56 PM
To: chunter@eac.gov
Subject: Eagleton Voter ID study

FYI - The EAC just released the attached press release and statement on a study submitted to the EAC from Rutger's Eagleton Institute of Politics.
The EAC voted to release all of the research submitted by Eagleton; however, the EAC did not adopt the report.

In my opinion, the methodology used by Eagleton is flawed and none of the information submitted is useful in any way. It is difficult to determine exactly what Eagleton did to come to their conclusions.

As noted in the attached statement, Eagleton "compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election - November 2004." Eagleton analyzed Census Bureau voting age population data and found no statistically significant correlation between ID requirements and turnout. So Eagleton then used data from the Current Population Survey (self reported) and found a "significant effect" on turnout. Eagleton concluded, for example, that based on the survey data, "the predicted probability that Hispanics would vote in states that required non-photo identification [NOT a photo ID] was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African Americans and Asian Americans, and about 2 percent for white voters."

A draft summary of this report was released by the EAC in early February. At that time, several press outlets, including NYT and USA Today, reported that the study shows a chilling effect on turnout in states with voter ID, particularly on minorities. The methodology is so flawed that no reasonable conclusion should be drawn, however, this "conclusion" reported by the press is based on comparing self reported turnout data from the U.S. Census Current Population Survey between states for ONE election year. It is hard to imagine that anyone who reads the report or even the EAC statement, which includes a summary of the methodogy used by Eagleton, will find the study useful.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

"Clark Bensen/Polidata"
<clark@polidata.us>
03/31/2007 06:09 AM

To chunter@eac.gov
cc
bcc
Subject RE: Eagleton Voter ID study

History: This message has been replied to.

Caroline,
Thanks...will review.

They should have had you on the agenda at the RNLA meeting yesterday...which was a great meeting...perhaps at the next DC meeing...
Clark

POLIDATA ® Demographic and Political Guides | www.polidata.us
POLIDATA ® Political Data Analysis | www.polidata.org
POLIDATA ® at CafePress | www.cafepress.com/polidata
POLIDATA ® at Lulu | www.lulu.com/polidata

Clark Bensen | POLIDATA | 3112 Cave Court | Lake Ridge, VA 22192
Tel: 703-690-4066 | EFAX: 202-318-0793 | email: clark@polidata.org

---

From: chunter@eac.gov [mailto:chunter@eac.gov]
Sent: Friday, March 30, 2007 1:56 PM
To: chunter@eac.gov
Subject: Eagleton Voter ID study

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www.eac.gov
Caroline C. Hunter
Commissioner
Election Assistance Commission
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(202) 566-3107
chunter@eac.gov
www.eac.gov

"Rokita, Todd"
<trokita@sos.IN.gov>
03/30/2007 02:55 PM

To chunter@eac.gov
cc
bcc
Subject RE: Eagleton Voter ID study

History: This message has been replied to.

Thank you Caroline. Do you feel comfortable with how things stand?

-----Original Message-----
From: chunter@eac.gov [mailto:chunter@eac.gov]
Sent: Friday, March 30, 2007 12:56 PM
To: chunter@eac.gov
Subject: Eagleton Voter ID study

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03/30/2007 01:56 PM

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www.eac.gov VoterID release 3-30-07.doc

Attorney-Client
Privilege

Juliet E. Hodgkins/EAC/GOV
03/28/2007 09:55 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,
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Subject Re: Comments on Eagleton's response

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Rosemary E. Rodriguez/EAC/GOV

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03/28/2007 06:54 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC
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03/28/2007 09:55 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,
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Rosemary E. Rodriguez/EAC/GOV

03/28/2007 06:54 PM

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Privilege

Juliet E. Hodgkins/EAC/GOV
03/28/2007 06:19 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, jlayson@eac.gov
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Gracia Hillman/EAC/GOV
03/19/2007 03:58 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC,
bcc
Subject Re: Revised Voter ID statement with Eagleton comments to paragraph 2

I think Comm Rodriquez makes a good point about the document needing a different title. Also, it is my understanding that Jeannie has not yet edited the draft and therefore has not yet considered layout, subtitles, typos, etc.

I have raised three concerns/questions in Footnotes 2 and 4 and in the bullet that address the working group meeting.

Lastly, I have lost track of where we are with consideration of releasing the full report. The draft document does not do that, however I thought there was a suggestion that we should consider releasing the full report?

Voter ID edited 31507- changes accepted with Eagleton comments.doc

Deliberative Process Privilege

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document[1] was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates[2] and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.[3]

Comment [GH1]: In Footnote #2: Regarding the estimate of non-citizens. Perhaps this could be clarified to say whether the % of non-citizens was in the VAP or of the US population as whole. It is not clear to me.

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Recommendations for further study and next steps

---

[1] In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

[2] The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

[3] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.[4] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

Comment [GH2]: There is no page 109 in the Eagleton Testimony that was presented on 2/8/07, so I am not clear what document the public is being directed to see.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

---

[4] See EAC Public Testimony, February 8, 2007, page 109.

- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

Comment [GH3]: Is it realistic that this meeting will be convened by June 30? Perhaps we should say, "Convene in 2007, a working

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

"Rosemary Rodriguez"
[redacted]
03/19/2007 10:56 AM

To jhodgkins@eac.gov, "Davidson, Donetta" <ddavidson@eac.gov>, ghillman@eac.gov, chunter@eac.gov
cc twilkey@eac.gov, jlayson@eac.gov, klynndyson@eac.gov
bcc
Subject Re: Revised Voter ID statement with Eagleton comments to paragraph 2

Several thoughts on formatting:

Does the title of the document still work?

I still think that the two paragraphs, the one that precedes the Julie paragraph and the one that follows, should be set apart and titled "conclusion" or "finding" or something that recognizes it was the subject of an action by the EAC.

and then i ask if the title of the next section still works--do we make recommendations to ourselves?

----- Original Message ----
From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>
To: "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov; chunter@eac.gov; rosemaryrod2003@yahoo.com
Cc: twilkey@eac.gov; jlayson@eac.gov; klynndyson@eac.gov
Sent: Friday, March 16, 2007 4:27:32 PM
Subject: Revised Voter ID statement with Eagleton comments to paragraph 2

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Juliet E. Hodgkins/EAC/GOV
03/16/2007 04:27 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, rosemaryrod2003@yahoo.com
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Revised Voter ID statement with Eagleton comments to paragraph 2

History: This message has been forwarded.

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.

Voter ID edited 31507- track changes with Eagleton comments.doc

Voter ID edited 31507- changes accepted with Eagleton comments.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document[1] was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates[2] and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.[3]

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Deleted: The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data–aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau– the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.¶

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Recommendations for further study and next steps

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[1] In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

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[2] The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

[3] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

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However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.[4] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

Deleted: research

Deleted: chose to employ in order to

Deleted: and the potential variation in

Deleted: based on the type of voter identification requirements

Deleted: on that point

Deleted:

Deleted:

Deleted: EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the

Deleted:

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

---

[4] See EAC Public Testimony, February 8, 2007, page 109.

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- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Caroline C. Hunter/EAC/GOV
04/02/2007 09:50 AM

To "Craig Burkhardt" [redacted]
cc
bcc
Subject Re: Eagleton Voter ID study

Very sad indeed

----- Original Message -----
From: "Craig Burkhardt" [cburkhardt@BTLaw.com]
Sent: 04/02/2007 09:20 AM AST
To: Caroline Hunter
Subject: Re: Eagleton Voter ID study

Dear Caroline:

What a sad use of taxpayer funds. I look forward to your oversight of these matters.

Hope all is well with you at the new office.

Regards,
Craig

Craig S. Burkhardt
BARNES & THORNBURG LLP
Craig.Burkhardt@btlaw.com

In Washington, DC:
750 17th Street, NW, Suite 900
Washington, DC 20006
Phone: (202) 408-6903
[redacted]
Fax: (202) 289-1330

In Chicago:
One North Wacker, Suite 4400
Chicago, IL 60606-2833
Phone: (312) 214-8802
Fax: (312) 759-5646

---

reliance opinions only in formal opinion letters containing the signature of a partner.

Caroline C. Hunter/EAC/GOV
04/02/2007 09:06 AM

To "Craig Burkhardt" [redacted]
cc
bcc
Subject Re: Eagleton Voter ID study

Yes, paid quite a bit for this and for Eagleton research on provisional ballots.

----- Original Message -----
From: "Craig Burkhardt" [cburkhardt@BTLaw.com]
Sent: 04/02/2007 08:40 AM AST
To: Caroline Hunter
Subject: Re: Eagleton Voter ID study

Dear Caroline: Thanks for the info. Did the EAC pay for this study?
Regards, Craig

Craig S. Burkhardt
BARNES & THORNBURG LLP
Craig.Burkhardt@btlaw.com

In Washington, DC:
750 17th Street, NW, Suite 900
Washington, DC 20006
Phone: (202) 408-6903
[redacted]
Fax: (202) 289-1330

In Chicago:
One North Wacker, Suite 4400
Chicago, IL 60606-2833
Phone: (312) 214-8802
Fax: (312) 759-5646

Caroline C. Hunter/EAC/GOV 03/31/2007 05:41 PM	To	"Rokita, Todd" <trokita@sos.IN.gov>
	cc	
	bcc	
	Subject	Re: Eagleton Voter ID study

I suppose as comfortable as can be expected.. Now that I've been there a few weeks, I'd like to catch up when you have some time.

----- Original Message -----
From: "Rokita, Todd" [trokita@sos.IN.gov]
Sent: 03/30/2007 02:55 PM AST
To: Caroline Hunter
Subject: RE: Eagleton Voter ID study

Thank you Caroline. Do you feel comfortable with how things stand?

-----Original Message-----
From: chunter@eac.gov [mailto:chunter@eac.gov]
Sent: Friday, March 30, 2007 12:56 PM
To: chunter@eac.gov
Subject: Eagleton Voter ID study

FYI - The EAC just released the attached press release and statement on a study submitted to the EAC from Rutger's Eagleton Institute of Politics.
The EAC voted to release all of the research submitted by Eagleton; however, the EAC did not adopt the report.

In my opinion, the methodology used by Eagleton is flawed and none of the information submitted is useful in any way. It is difficult to determine exactly what Eagleton did to come to their conclusions.

As noted in the attached statement, Eagleton "compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election - November 2004." Eagleton analyzed Census Bureau voting age population data and found no statistically significant correlation between ID requirements and turnout. So Eagleton then used data from the Current Population Survey (self reported) and found a "significant effect" on turnout. Eagleton concluded, for example, that based on the survey data, "the predicted probability that Hispanics would vote in states that required non-photo identification [NOT a photo ID] was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African Americans and Asian Americans, and about 2 percent for white voters."

A draft summary of this report was released by the EAC in early February. At that time, several press outlets, including NYT and USA Today, reported that the study shows a chilling effect on turnout in states with voter ID, particularly on minorities. The methodology is so flawed that no reasonable conclusion should be drawn, however, this "conclusion" reported by the press is based on comparing self reported turnout data from the U.S. Census Current Population Survey between states for ONE election year. It is hard to imagine that anyone who reads the report or even the EAC statement, which includes a summary of the methodogy used by Eagleton, will find the study useful.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Caroline C. Hunter/EAC/GOV
03/16/2007 11:43 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, [redacted]
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, stephanie.wolson@gmail.com
bcc
Subject Re: Voter ID statement

This looks good to me, thank you Julie. Two things- did Eagleton approve the 2nd graph and I made a minor change to the 4th bullet as a point of clarification.

Juliet E. Hodgkins
----- Original Message -----

From: Juliet E. Hodgkins
Sent: 03/16/2007 09:41 AM EDT
To: Donetta Davidson; Gracia Hillman; Caroline Hunter; [redacted]
Cc: Thomas Wilkey; Jeannie Layson
Subject: Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Caroline C. Hunter/EAC/GOV]
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Caroline C. Hunter/EAC/GOV]

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Caroline C. Hunter/EAC/GOV
03/13/2007 04:36 PM

To Karen Lynn-Dyson/EAC/GOV
cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC,
bcc
Subject Re: Latest draft of the EAC Voter ID statement

Attached, please find my edits. My intention was to try to explain in English how the Contractor conducted the study in the 2nd graph of the background statement. I realize I left some information out; for example, how he ran the numbers based on maximum and minimum id requirements. I am open to any suggestions on how to better describe what they did; however, despite reading the report and Appendix C many times, I am still do not understand exactly how the study was conducted. I think we should run the 2nd graph by the Contractor to ensure its accuracy.

VoterID Hunter edits.doc

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
chunter@eac.gov
www.eac.gov

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
03/09/2007 05:20 PM

To Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, [redacted]
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov
Subject Latest draft of the EAC Voter ID statement

Commissioners-

Commissioner Hunter noted that several changes to the draft that she had recommended were not included in the latest draft that I sent to Julie and Jeannie. had.

Attached please find this new version which I hope accurately reflects her suggestions; we are asking that everyone take a look at this version.

Please get me your comments and recommended edits by Monday.

Thanks-

Voter ID Statement March 9.doc

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV
02/21/2006 02:22 PM

To "Tom O'neill" [redacted]
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Nicole
bcc
Subject Re: Meeting with EAC in March

Tom-

I will begin to poll the Commissioners to get a sense of when they might be available to do a "close out " meeting with Eagleton.

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Tom O'neill" <[redacted]

"Tom O'neill"
<[redacted]
02/21/2006 10:45 AM

To klynndyson@eac.gov
cc
Subject Meeting with EAC in March

Karen,

The Eagleton-Moritz team would like to schedule a meeting with the EAC in March. It would be the final substantive meeting on our contract, which expires at the end of March.

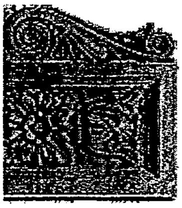
The agenda would include:

1. Brief the Commission on the principal findings and recommendations of the Voter ID research and hear questions and comments on that work.
2. Discuss the changes we made to the Provisional Voting paper as a result of comments and questions from the Commission.
3. Explore the Commission's intentions for the use of our work as recommendations for best practices or otherwise.

I believe the meeting should take place after you receive the Voter ID paper from us in the first week of March, and ideally after the Commission staff has had enough time for a preliminary review of it.

The earlier we could set a date for this meeting, the more key members of the team would be able to participate.

Tom O'Neill



Bert A. Benavides/EAC/GOV
05/22/2006 03:24 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Jeannie
cc Edgardo Cortes/EAC/GOV@EAC, Laiza N. Otero/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Sheila A.
bcc
Subject Draft Agenda for Comm. Staff Briefings 5-30-06 and 6-01

History: This message has been forwarded.

Please review the following agendas and let me know if you have additional items to submit for consideration. Please note Tom would like to confine Tuesday's briefing on 5-30 to the House testimony, unless something equally timely surfaces. Thanks.

Tuesday, 5-30-06

- All Commissioners are expected to be present.
- Executive Director Wilkey participating via teleconference.

1. Testimony, House Admn Hearing (Julie)	Matls to be distributed

Thursday, 6-01-06

- All Commissioners are expected to be present.

1. TGDC (Brian H)	No materials
2. Eagleton Voter ID Study (KLD)	Matls distributed 5-17
3. Eagleton Social Security SOW (KLD)	Matls distributed 5-16
4. Weekly Project Report (Tom)	Matls to be distributed

Bert A. Benavides
Special Assistant to Executive Director Thomas Wilkey
U. S. Elections Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
202.566.3114 direct line
202.566.1389 fax

Brian Hancock/EAC/GOV
08/03/2006 02:27 PM

To Elieen L. Collver/EAC/GOV@EAC
cc
bcc
Subject ID requirements

History: This message has been replied to.

Elle,
Attached is a letter from DOJ to Massachusetts re Voter ID. I'd also suggest that you have a quick chat with Gavin since he is in the middle of these issues from our end.

Brian

MA_ltr.pdf

Brian Hancock
Director of Voting System Testing & Certification
U.S. Election Assistance Commission
1225 New York Avenue, NW, Ste. 1100
Washington, DC 20005
202-566-3100
www.eac.gov

U.S. Department of Justice

Civil Rights Division

Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

JDR:RJW:SBP:baw
DJ 166-36-0

February 11, 2004

The Honorable William F. Galvin
Secretary of the Commonwealth
of Massachusetts
State House
Boston, Massachusetts 01233

Dear Secretary Galvin:

Your letter of February 2, 2004, to Hans von Spakovsky, has been forwarded to the Voting Section for response. In that correspondence, you raised concerns regarding the implementation in Massachusetts of the voter identification requirements of Section 303(b) of the Help America Vote Act of 2002, 42 U.S.C. § 15483(b) ("HAVA"). You also seek clarification of certain comments by the Department of Justice's Voting Section as to the propriety of possible identification procedures in the City of Lawrence.

Section 303(b) applies to persons registering for the first time to vote in federal elections, who apply to register by mail after January 1, 2003 and who do not come within a Section 303(b)(3) exemption. If such persons do not include with their registration applications a copy of one of several forms of identification set forth in the statute, they must either show the requisite identification at the polls when voting in person, or include a copy of such identification with their ballot if voting by mail.

Under Section 303(b)(1), these requirements must be administered to all voters in a uniform and nondiscriminatory manner, and do not vary with the demographic makeup of a State or its sub-jurisdictions. Section 304 also specifies that these are "minimum requirements" and thus nothing prevents a State from establishing stricter requirements. The Justice Department has worked with States to implement all of HAVA's requirements for federal elections, including those of Section 303(b), and has the authority under Section 401 of HAVA to bring federal civil actions for declaratory and injunctive relief against jurisdictions that fail to carry out the requirements of the statute.

With specific regard to the City of Lawrence, your letter mentions a private, pre-HAVA lawsuit filed in November 2001 (on the eve of municipal elections) that sought to enjoin the city's plans to require all in-person voters to show personal identification at the polls. See Morris v. City of Lawrence, No. 01-11889 (D. Mass.). The city had adopted this new identification requirement just before the election, and the court enjoined its implementation. Critically, however, the Justice Department did not participate in any way in that litigation, nor was it consulted by the court. Although the Justice Department had negotiated a consent decree with the city in a separate pre-HAVA lawsuit involving claims of insufficient assistance offered by the city to Spanish-speaking voters, see United States v. City of Lawrence, No. 98-12256 (D. Mass.), at no time did the Department ever suggest that the city's voter identification procedure would violate any provision of the Voting Rights Act.

You also reference in your correspondence an October 24, 2001, letter sent to the city by a Voting Section attorney in which he expresses his concerns regarding the possible impact of the city's then-new identification procedures on the city's compliance with the consent decree in United States v. City of Lawrence. But the Department did not object to the city's voter identification procedures per se, and its letter should not be read in any way to have done so. The problem, as outlined in our letter, was the inadequate time the city had to implement these new requirements and train pollworkers in the new procedures.

As noted above, the Department of Justice has been given the responsibility by Congress to enforce HAVA, including the voter identification procedures. The Department has made it clear that these requirements do not violate the Voting Rights Act of 1965 on several occasions:

1) in a February 26, 2002, letter to U.S. Senator Christopher S. Bond, www.usdoj.gov/crt/voting/hava/bond_ltr.pdf;

2) in a question and answer posted on the Voting Section's website, www.usdoj.gov/crt/voting/misc/faq.htm#faq27; and

3) by preclearing under Section 5 of the Voting Rights Act voter identification laws submitted by various states, including the State of Alabama, which implemented the HAVA identification requirements and expanded them to apply to all voters, not just first-time registrants.

We understand that the implementation of HAVA is a complex undertaking for the States. Since its passage, we have been working with state election officials as closely as possible to deal with these issues and to help States address whatever practical concerns arise. We look forward to working with you and your office to make HAVA implementation a success for all of Massachusetts' voters.

Thank you again for writing.

Sincerely,

Joseph D. Rich
Chief
Voting Section

"Reynolds, Chris"
<creynold@ss.ca.gov>
08/03/2006 06:07 PM

To ecollver@eac.gov
cc
bcc
Subject RE: Voter ID/Provisional voting

I followed up on your request of this morning, but, unfortunately, we have no person to refer. Perhaps we can talk some more about this, but at present we are drawing a blank. Sorry.

-----Original Message-----
From: ecollver@eac.gov [mailto:ecollver@eac.gov]
Sent: Thursday, August 03, 2006 12:10 PM
To: Reynolds, Chris
Subject: Voter ID/Provisional voting

Hi Chris,

Nice speaking with you this morning. I have a couple of things that you may look at regarding the federal requirements for ID and the casting of provisional ballots. I have attached a letter from DoJ which offers guidance on identification procedures. And here is a link to our website which gives an advisory on provisional voting. Let me know if you are able to find a couple of names that I can have on file of people who may be good ones to speak on these issues.

Thanks!

Best regards,
Elle

http://www.eac.gov/docs/EAC%20Advisory%2005-006%20Provisional%20Voting.pdf

(See attached file: MA DoJ letter.pdf)

Elle L.K Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

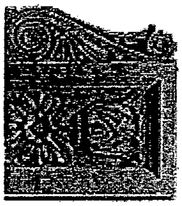
Jeannie Layson/EAC/GOV
01/25/2007 05:25 PM

To Bert A. Benavides/EAC/GOV@EAC
cc bbenavides@eac.gov, bhancock@eac.gov, Bryan Whitener/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L.
bcc
Subject Re: Revised draft agenda for Public meeting 2-08-07

History: This message has been forwarded.

This agenda includes the name of the Eagleton doc, "Best Practices to Improve Voter Identification Requirements." Based on the feedback from this morning, I think it should simply be labled as "Briefing on Eagleton's Research on Voter Identification."

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Bert A. Benavides/EAC/GOV



Bert A. Benavides/EAC/GOV
01/25/2007 12:01 PM

To Donetta L. Davidson/EAC/GOV, PDegregorio@eac.gov, Gracia Hillman/EAC/GOV, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV, Jeannie Layson/EAC/GOV, bhancock@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV, Curtis Crider/EAC/GOV@EAC, Roger Larouche/CONTRACTOR/EAC/GOV@EAC
cc Elieen L. Kuala/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV, Bryan Whitener/EAC/GOV@EAC, bbenavides@eac.gov
Subject Revised draft agenda for Public meeting 2-08-07

Attached is the revised draft agenda for our 2-08-07 Public Meeting. Please review and let me know of your approval so we may proceed to post on the website. Thanks.

Public Meeting, 2-08-07, Wash., Draft Agenda.doc

Deliberative Process Privilege

U.S. Election Assistance Commission Public Meeting Agenda

**1225 New York Avenue, NW
Suite 150
Washington, DC
Thursday, February 08, 2007
10:00 AM - 1:00 PM EST**

Call to Order (Chair Davidson)

Pledge of Allegiance (Chair Davidson)

Roll Call

Adoption of Agenda (Chair Davidson)

Welcoming Remarks (Chair Davidson)

OLD BUSINESS:

- **Correction and Approval of Minutes from the December 07, 2006 Meeting (Chair Davidson)**
- **Report of the Executive Director (Thomas Wilkey)**

NEW BUSINESS:

- **Update on EAC Interim Laboratory Accreditation Program**
  - **Brian Hancock, Director, Voting Systems Certification, U. S. Election Assistance Commission**
- **Update on EAC/NVLAP Accreditation Programs**
  - **Mary H. Saunders, Chief, Standards Services Division, National Institute of Standards and Technology (NIST)**

Break

- **Briefing on Eagleton's Research on Voter Identification – "Best Practices to Improve Voter Identification Requirements,"**
  - **Karen Lynn-Dyson, Research Director, U. S. Election Assistance Commission**
  - **John Weingart, Associate Director, Eagleton Institute of Politics, Rutgers University**

- **EAC Audit Process and State Observations**
  - **Curtis Crider, Inspector General, U. S. Election Assistance Commission**
  - **Roger LaRouche, Assistant Inspector General, U. S. Election Assistance Commission**
  - **Dan Glotzer, HAVA Grant Manager, Texas Secretary of State**
  - **Marci Andino, Executive Director, State Election Commission, South Carolina**

Commissioners' Closing Remarks

Adjournment

Thomas R. Wilkey/EAC/GOV
01/25/2007 05:35 PM

To Jeannie Layson/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC
cc Brian Hancock/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L.
bcc
Subject Re: Revised draft agenda for Public meeting 2-08-07

History: This message has been forwarded.

Perfect

Sent from my BlackBerry Wireless Handheld
Jeannie Layson
----- Original Message -----

From: Jeannie Layson
Sent: 01/25/2007 05:25 PM
To: Bert Benavides
Cc: Bert Benavides; Brian Hancock; Bryan Whitener; Donetta Davidson; Elieen Kuala; Gavin Gilmour; Gracia Hillman; Juliet Hodgkins; Karen Lynn-Dyson; Matthew Masterson; Paul DeGregorio; Sheila Banks; Thomas Wilkey; Bryan Whitener
Subject: Re: Revised draft agenda for Public meeting 2-08-07

This agenda includes the name of the Eagleton doc, "Best Practices to Improve Voter Identification Requirements." Based on the feedback from this morning, I think it should simply be labled as "Briefing on Eagleton's Research on Voter Identification."

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Bert A. Benavides/EAC/GOV

Bert A. Benavides/EAC/GOV
01/25/2007 12:01 PM

To Donetta L. Davidson/EAC/GOV, PDegregorio@eac.gov, Gracia Hillman/EAC/GOV, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV, Jeannie Layson/EAC/GOV, bhancock@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV, Curtis Crider/EAC/GOV@EAC, Roger Larouche/CONTRACTOR/EAC/GOV@EAC
cc Elieen L. Kuala/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV, Bryan Whitener/EAC/GOV@EAC, bbenavides@eac.gov
Subject Revised draft agenda for Public meeting 2-08-07

Attached is the revised draft agenda for our 2-08-07 Public Meeting. Please review and let me know of your approval so we may proceed to post on the website. Thanks.

[attachment "Public Meeting, 2-08-07, Wash., Draft Agenda.doc" deleted by Thomas R. Wilkey/EAC/GOV]

Karen Lynn-Dyson/EAC/GOV
02/05/2007 04:09 PM

To Sheila A. Banks/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC
cc Elieen L. Kuala/EAC/GOV@EAC
bcc
Subject Voter ID materials

History: This message has been forwarded

Sheila/Matt-

Attached are materials which your Commissioners may find useful for Thursday's meeting.

I am also preparing a series of additional questions for Commissioner Davidson, which she may be sharing with her colleagues.

K

New EAC Voter ID Report.doc VoterIDReport062806INAL.pdf EAC Voter ID draft-long version.doc

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic which are detailed in the attached report.

EAC Recommendations for further study and next steps

EAC finds this initial review of States' voter identification requirements, state laws and litigation surrounding the implementation of voter identification requirements an important beginning step in its consideration of voter identification requirements. From this study and compilation of data EAC considers it advisable to engage in a longer-term, systematic review of voter identification requirements and is recommending that at a minimum the agency engage on an ongoing basis in:

- A state-by-state review, reporting and tracking of voter identification requirements.
- A review and study of how voter identification requirements are implemented and how these practices may vary from state law and statute.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into how voter identification requirements have had an impact over time on factors such as voter turnout and voter registration.

EAC believes that the findings from this initial study of voter identification requirements are helping inform additional studies it is conducting on a variety of related topics. The EAC study on first time voters who have registered to vote by mail and several forthcoming studies related to voter registration processes will provide necessary additional data to help inform discussions and debate related to ballot access and ballot security. The EAC also anticipates that follow-on study it does related to election crimes and various aspects of voting accessibility will also help inform and guide these ballot security and ballot access discussions.

Finally, EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout and voter registration figures;
- A research study which examines, in greater detail, the relationship between race and voter turnout, and race and methods for registering voters;
- Studies on the inter-relationship between various voter registration processes, voter turnout and number of election crimes reported or litigated;
- Publication of a series of case studies which detail a particular state's or jurisdiction's experiences with various voter identification and voter registration regimes;
- A policy paper or memorandum exploring the alternatives to current voter identification processes and regimes.

EAC Report on Voter Identification

Executive Summary

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data, aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau, the contractor found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;
- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

Introduction

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure board access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters-- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

Methodology of the Study

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

Study Oversight and Methodological Review

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

The Eagleton Institute of Politics Peer Review Group

R Michael Alvarez, California Institute of Technology
John C. Harrison, University of Virginia School of Law
Martha E. Kropf, University of Missouri-Kansas City
Daniel H. Lowenstein, University of California at Los Angeles
Timothy G. O'Rourke, Salisbury University
Bradley Smith, Capital University Law School
Tim Storey, National Conference of State Legislatures
Peter G. Verniero, former Attorney General, State of New Jersey

The EAC Peer Review Group

Jonathan Nagler, New York University
Jan Leighley, University of Arizona
Adam Berninsky, Massachusetts Institute of Technology

Summary of the Research

Maximum and Minimum Voter Identification Requirements

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification and, providing a form of photo identification. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the "maximum" requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section- it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

The Relationship of Voter Identification Requirements to Voter Turnout

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-**footnote about how they collected the data**) and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement **(what about affidavit?????).** Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

Aggregate-level statistical analysis

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements (r=-.30, p less than .05). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant (r=.-20, p=.16). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend was found when analyzing minimum ID requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)

Multivariate models of analysis using aggregate-level data

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.
- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.
- Voter turnout declined as the percentage of Hispanics in a county's population increased.
- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.
- The percentage of African-Americans in the county did not have a significant effect on turnout.

The Eagleton Institute analysis of minimum voter identification requirements showed that:

- A relationship between minimum voter ID requirements and turnout was not demonstrated.
- Battleground states and those with competitive state races had a significant and positive correlation to turnout.
- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.
- The percentage of Hispanics in the county was associated with reduced turnout.
- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation, between maximum voter identification requirements (a signature match and non-photo identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

Multivariate analysis using individual level turnout data

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. **(why is the N is Table 3 54,973?)**

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race **(explain)**.
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting **(high income or low income, single, married?)**,
- Women were more likely to say they voted than men.
- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.

Analysis of the predicted probability of voter turnout using the individual data

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements (**which ones?**) exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lover turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

- The predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state one's name.

- Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. African American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.

- Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, while they were 6.1

percent less likely to vote where non-photo identification was the minimum requirement.

- For those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

Conclusions from the statistical analysis

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual–level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.
- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.
- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.
- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

Caveats to the Analysis

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot?

Knowing more about the "on the ground" experience of voters regarding various identification requirements will guide state and local level policy markers in their efforts to educate voters about the requirements. These experiences could also help instruct election judges on how to handle questions and possible disputes over voter identification requirements.

Public Policy and Administrative Considerations

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies the will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and sprit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

Recommendations and Next Steps

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.

- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout

- Alternative forms and methods for verifying a voter's identity.

- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted

- A continuing state-by-state update on changes to voter identification requirements.

- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State

Appendix B: Court Decisions and Literature on Voter Identification and Related Issue Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

Deliberative Process Privilege

Report to the U. S. Election Assistance Commission On Best Practices to Improve Voter Identification Requirements Pursuant to the HELP AMERICA VOTE ACT OF 2002 Public Law 107-252

June 28, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

Report to the
U. S. Election Assistance Commission

Best Practices to Improve Voter Identification Requirements

CONTENTS

The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891.It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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REPORT AND RECOMMENDATIONS TO THE EAC
VOTER IDENTIFICATION ISSUES

Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

- Opponents seek to forestall more stringent identification requirements, such as government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate. It inquires whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout. That analysis would constitute an important first step in assessing tradeoffs between ballot security and ballot access. The aim of this research is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis examined the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information (such as the specific reasons some potential voters are not allowed to cast a regular ballot) that that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on

turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:[1] the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.[2] Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, the different statistical methods and two different sets of data on turnout in 2004 election used in the study point to the same general finding. Stricter voter identification requirements (for example, requiring voters to present non-photo ID compared to simply stating their names) were correlated with reduced turnout in the models employed, as described in detail in Appendix C.[3] As explained below, these models find that a statistically

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[1] See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

[2] The EAC has contracted with other researchers to study vote fraud issues.

[3] Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout.* Using the aggregate data, photo ID did not have a significant effect on turnout, possibly because in the

significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. (But note that in the model using the aggregate data, photo ID did not have a significant effect on turnout. The reason may have been that in this election, each state with a photo ID requirement provided an alternate way for those without a photo ID to cast a regular ballot.) Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible voters, however, the tradeoffs between ballot security and ballot access cannot be assessed.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.[4] The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state

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2004 election every state requiring photo ID provided an alternative way to cast a regular ballot for those voters who lacked photo identification. The individual data from the Current Population Survey did show a significant effect, but only for the overall sample and for white voters, which may be an artifact of the large sample size.

[4] Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always

for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, for the maximum ID requirements, the match-signature requirement and the provide-a- non-photo-ID requirement, but not the photo ID requirement, were all correlated with lower turnout compared to requiring that voters state their names. When the registration closing deadline was added as an independent variable in the aggregate analysis, signature match and non-photo id remained significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such

knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.[5] And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

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[5] Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. A "Voter Impact Statement" would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC might also use the information reported by the states to encourage further assessment by the states of the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
    I. Useful information could be supplied by state-sponsored surveys of voters conducted by local election officials. Such surveys would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
    II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
    III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks

statutory or regulatory requirements. Such reports should be available to the public.

4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots[6], and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is less certain.

SUMMARY OF RESEARCH

Background and Approach of the Study

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

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[6] Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review.* 61:2 (June 1967) found that local variations in the rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.
- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly.* 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics.* 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.

- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior.* 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review.* 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review.* 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.

- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review.* 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior.* 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.
- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior.* 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics.*, 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.[7] The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

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[7] As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.[8]

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.[9] Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that

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[8] Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

[9] "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud.*

increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.[10] Voter ID requirements that require voters to bring a document to the polls –rather than simply sign their names– may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.[11] And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

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[10] For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

[11] The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest seven questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?[12]
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?[13]
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?[14]
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.[15] A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

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[12] "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

[13] See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

[14] In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

[15] "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?[16]
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it, intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

Voter ID and Turnout

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004.These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).[17] Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.[18]

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the

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[16] For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

[17] Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

[18] As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.[19] Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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[19] One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

TABLE 1 – Voter ID Requirements[20]

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID[1]	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID[2]	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID[4]	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

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[20] See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID[5]	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID[6]	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID[7]	Provide ID	Affidavit
Texas	Provide ID	Provide ID[8]	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

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* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

[1] Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

[2] Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

[3] Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

[4] Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

[5] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[6] Voters lacking a photo ID could vote by providing another form of ID in 2004.

[7] Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

[8] Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30$, $p < .05$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ($r= -.20$, $p = .16$). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	**64.2 %**	State Name	**63.0 %**
Sign Name	**61.1 %**	Sign Name	**60.4 %**
Match Signature	**60.9 %**	Match Signature	**61.7 %**
Provide Non-Photo ID	**59.3 %**	Provide Non-Photo ID	**59.0 %**
Provide Photo ID	**58.1 %**	Swear Affidavit	**60.1 %**
Average Turnout (All States)	***60.9 %***		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables.[21](Dichotomous variables reflect either the presence or absence of a characteristic. In the dummy variable for non-photo ID, a state would be coded as 1 if it required non-photo ID, and 0 otherwise.)

Voter identification requirements are just one factor that might affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American [22]
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering

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[21] The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

[22] The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

The dependent variable in each model using the aggregate data was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that the stricter voter identification requirements of matching one's signature to a signature on file with election authorities or presenting a non-photo ID are associated with lower turnout compared to turnout in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. (A "dummy variable" represents a particular attribute and has the value zero or one for each observation, e.g. 1 for male and 0 for female.) Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election. [23]

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[23] This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum requirements, a signature match and non-photo identification –but not photo identification– were correlated at a significant level with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.[24] Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.[25] The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens, who in this survey were not asked the voter registration and turnout questions. In

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[24] For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).[24] Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

[25] It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have influenced turnout in 2004.[26] The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.[27]

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.[28] Table 3 below shows predicted probabilities (calculated from the probit

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[26] The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

[27] The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

[28] A probit model is a popular specification of a generalized linear regression model, using the probit link function.

coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.[29]

Table 3. Predicted probability of voter turnout – all voters

	Maximum requirement	Minimum requirement
State name	91.7%	91.5%
Sign name	89.9%	90.2%
Match signature	Not significant	Not significant
Non-photo ID	89.0%	89.0%
Photo ID	88.8%	—
Affidavit	—	87.%5
Total difference from "state name" to "photo ID" or "affidavit"	**2.9%**	**4.0%**
N	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from stating one's name to providing photo identification or an affidavit , with all other variables held constant.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.[30] In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those with fewer years of education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum

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[29] In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

[30] The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.[31] The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

More rigorous voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data,

---

[31] Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

In the aggregate data, the match-signature requirement and the provide-a-non-photo ID requirement were correlated with lower turnout compared to requiring that voters state their names. But the photo-ID requirement did not have an effect that was statistically significant, possibly because in 2004 each state requiring a photo-ID provided an alternative way to cast a regular ballot for voters who lacked that document.

In the model using the individual-level data the signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names (in the entire sample and for white voters, but the statistical significance may be an artifact of the very large sample size). That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*).. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.[32] Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a

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[32] Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer,* No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a

balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgement in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased. [33]

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[33] In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

Jeannie Layson/EAC/GOV	To	ddavidson@eac.gov
02/15/2007 03:30 PM	cc	Elieen L. Kuala/EAC/GOV@EAC
	bcc	
	Subject	Interview request

History: ✉ This message has been forwarded.

Rich Wolfe of USA Today wants to interview you about the voter ID report... wants to know where we go from here, your reaction to the preliminary info provided by Eagleton, etc. He needs to talk to you before noon tomorrow, so maybe you could call him before you fly out? His cell is [redacted] Please let me know. Call me and I'll discuss talking pts with you. 202-566-3103.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Thomas R. Wilkey/EAC/GOV
03/01/2007 02:58 PM

To Elieen L. Kuala/EAC/GOV@EAC
cc bbenavides@eac.gov
bcc
Subject Re: meeting

I am available

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov
Elieen L. Kuala/EAC/GOV

Elieen L. Kuala/EAC/GOV
03/01/2007 02:29 PM

To twilkey@eac.gov
cc
Subject meeting

Tom,

The chair would like to know if you are available on Monday at 230 to speak with the Commissioners, Julie, and Karen regarding the voter ID issue. I will wait to hear from you before I send out the meeting request.

Thanks,
Elle

Elle L.K. Kuala
Special Assistant to the Chair
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
office: (202) 566-2256
fax: (202) 566-1392
[redacted]

Jeannie Layson/EAC/GOV
03/22/2007 05:03 PM

To ddavidson@eac.gov, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov, Elieen L. Kuala/EAC/GOV@EAC, sbanks@eac.gov, stephanie.wolson@gmail.com,
bcc
Subject Voter ID roll out strategy

Commissioners,
Attached is a memo outlining my suggested strategy for releasing the results of your tally vote. It includes an overall message and Q&A. Please let me know if you have any questions about this information, and I look forward to your input. Thank you.

VoterIDRollOutProposal 03-22-07.doc

Jeannie Layson
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Deliberative Process Privilege

ELECTION ASSISTANCE COMMISSION • UNITED STATES OF AMERICA

March 22, 2007

MEMORANDUM

To: Commissioners Davidson, Rodriguez, Hunter and Hillman
Fr: Jeannie Layson
Cc: Tom Wilkey, Julie Hodgkins, Karen Lynn-Dyson, Bryan Whitener
RE: Communications Strategy for Release of Voter ID Tally Vote Results

In anticipation of the release of the results of the tally vote and all of the information provided by the contractor, I suggest taking the following steps to effectively communicate your decision. Taking this approach will help us control how the information is distributed, how it is framed, and how to focus the discussion on the positive outcome of your decision.

The bottom line is that we want to try our best to make this a story about EAC's decision to conduct a thorough and in-depth look into the subject of voter ID, and we have decided to release the preliminary research. We do not want this to evolve into a storyline about squabbling between EAC and Eagleton.

I have provided a suggested overall message that reflects the action taken, as well as questions we should be prepared to answer.

Please let me know if you have any questions about my proposal, and I look forward to your input.

PRELIMINARY ACTIVIES

Prior to the completion of the tally vote and the subsequent release of the results and the contractor's materials, I suggest taking the following steps:

1. Discuss EAC's decision with the contractors in advance of distributing the press release and discussions with reporters so that they have an opportunity to respond and also so they will be well informed and prepared to discuss the facts with reporters or others who will most likely contact them.
2. Prior to release of EAC's decision, reach out to key Hill staffers who have been following this issue, including those members who have requested this data in the past. This should include staffers for the House Appropriations Committee Subcommittee on Financial Services and General Government since the Committee requested this information a few weeks ago. It should be made clear to committee staffers that the tally vote is the culmination of a directive made by the EAC chair in Feb. that the agency move forward to complete this project. These staffers should also be included on our list of key stakeholders.
3. Executive director should determine whether there are other key stakeholders that should be made aware of this decision from EAC personally, not from a press release. Possible candidates include members of Congress, NASS, individual secretaries of state, DOJ, and NASED.

PUBLIC ROLL-OUT

Once the above preliminary steps have been completed, EAC Communications will:

1. Post the press release and the related data on the website, with a link from the home page.
2. Prior to release of the tally vote decision and related data, call Richard Whitt of USA Today, Will Lester of AP, Chris Drew of the NYT, and Zach Goldfarb of the WaPo and let them know we are about to release the information. Offer interviews with the chair or other commissioners.
3. Send the press release (with a link to the research) to all recipients in the media database. This includes national dailies, as well as wire services such as the Associated Press.
4. Send the press release (with a link to the research) to all recipients in the stakeholder database. The database consists of election officials, advocates, and other interested parties, including representatives from organizations who have been critical of EAC, including VoteTrust USA and the People for the American Way.

OVERALL MESSAGE

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, was insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors including, the many changes in state laws and regulations that have occurred since the 2004.

Q&A

We should be prepared to answer the following questions:

Q: Why not release the draft fraud report, too?

A: EAC issued a final Voting Fraud and Voter Intimidation Report in December 2006, which included recommendations adopted by the Commission to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

In the case of the voter ID report, the Commission chose not to adopt a final report because it was determined that there was insufficient data to provide meaningful conclusions.

Q: You cited concerns with the contractor's methodology and analysis. Didn't your contract with Eagleton include specific language regarding these issues?

A: Yes, but in retrospect, perhaps we could have done a better job articulating how we wanted this research to be conducted.

Q: During the course of the project, did you see draft reports? If so, why didn't these concerns get addressed at that time?

A: We did receive progress reports, and when we identified areas of concern, we discussed it with the contractor. It was because of these concerns that EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: During the course of the contract, did you ever express these concerns with Eagleton?

A: Yes, and as a result of these conversations, EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: You spent more than $500,000 for a report the Commission doesn't think should be adopted – so basically you're flushing a lot of money down the drain. Is this a wise use of taxpayer dollars?

A: There is value in what Eagleton provided. It will help provide a baseline for how to move forward. And even though their research raised many questions, contemplating the answers to those questions has informed us on how to move forward.

Q: If you were not satisfied with the final product, why did you pay for it?
A: We adhered to the terms of the contract.

Q: EAC received this data in June of last year. What has taken so long to bring it to a conclusion?
A: This is an important issue, one that deserves careful deliberation and a thorough approach. Yes, we like to get things done quickly, but it is more important to take the time to get things right.

TRANSITION PHRASES

To stay on message and avoid being dragged into discussions about anything other than the action taken, employ the following phrases and transition back to the overall message.

Overall Message

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, were insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors, including the many changes in state laws and regulations that have occurred since 2004.

Bridge/Transition Phrases

- What's really important here...
- The bottom line is...
- The point is...
- We have a responsibility to...
- I'll let others speak to that, but let me tell you what's important to EAC...
- Everyone agrees that...

Jeannie Layson/EAC/GOV
03/27/2007 02:02 PM

To ddavidson@eac.gov, [redacted]
Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov,
jthompson@eac.gov, bwhitener@eac.gov, Elieen L.
Kuala/EAC/GOV@EAC, [redacted]
bcc
Subject FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,
I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the $500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

VoterIDRollOutProposal REV.doc

VoterIDTallyVotePRDRAFT3-27.doc

Jeannie Layson
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Deliberative Process Privilege

March 27, 2007

MEMORANDUM

To: Commissioners Davidson, Rodriguez, Hunter and Hillman
Fr: Jeannie Layson
Cc: Tom Wilkey, Julie Hodgkins, Karen Lynn-Dyson, Bryan Whitener
RE: Communications Strategy for Release of Voter ID Tally Vote Results

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The bottom line is that we want to try our best to make this a story about EAC's decision to conduct a thorough and in-depth look into the subject of voter ID, and we have decided to release the preliminary research. We do not want this to evolve into a storyline about squabbling between EAC and Eagleton.

I have provided a suggested overall message that reflects the action taken, as well as questions we should be prepared to answer.

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3. Executive director should determine whether there are other key stakeholders that should be made aware of this decision from EAC personally, not from a press release. Possible candidates include members of Congress, NASS, individual secretaries of state, DOJ, and NASED.

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Q&A

We should be prepared to answer the following questions:

Q: Why not release the draft fraud report, too?
A: EAC issued a final Voting Fraud and Voter Intimidation Report in December 2006, which included recommendations adopted by the Commission to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

In the case of the voter ID report, the Commission chose not to adopt a final report because it was determined that there was insufficient data to provide meaningful conclusions.

Q: You cited concerns with the contractor's methodology and analysis. Didn't your contract with Eagleton include specific language regarding these issues?
A: Yes, but in retrospect, perhaps we could have done a better job articulating how we wanted this research to be conducted.

Q: During the course of the project, did you see draft reports? If so, why didn't these concerns get addressed at that time?
A: We did receive progress reports, and when we identified areas of concern, we discussed it with the contractor. It was because of these concerns that EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

Q: During the course of the contract, did you ever express these concerns with Eagleton?
A: Yes, and as a result of these conversations, EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

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A: There is value in what Eagleton provided, and this included work they did for us regarding provisional voting. As a result of the research on provisional voting, EAC

issued a set of best practices last fall. The voter ID data will help provide a baseline for how to move forward. And even though their research raised many questions, contemplating the answers to those questions has informed us on how to move forward.

Q: If you were not satisfied with the final product, why did you pay for it?
A: We adhered to the terms of the contract.

Q: EAC received this data in June of last year. What has taken so long to bring it to a conclusion?
A: This is an important issue, one that deserves careful deliberation and a thorough approach. Yes, we like to get things done quickly, but it is more important to take the time to get things right.

TRANSITION PHRASES

To stay on message and avoid being dragged into discussions about anything other than the action taken, employ the following phrases and transition back to the overall message.

Overall Message

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, were insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors, including the many changes in state laws and regulations that have occurred since 2004.

Bridge/Transition Phrases

- What's really important here...
- The bottom line is...
- The point is...
- We have a responsibility to...
- I'll let others speak to that, but let me tell you what's important to EAC...
- Everyone agrees that...

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

EAC to Launch Comprehensive Study of Voter ID Laws

For Immediate Release
DATE, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws. The initial research on voter identification laws are available at www.eac.gov, but because this research focused exclusively on the 2004 general elections, included populations that are not eligible to vote, and did not take into account influential factors such as the competitiveness of campaigns, it was insufficient to provide meaningful conclusions and thus the Commission declined to adopt a report based on it.

"New voter identification laws have been enacted recently, and the Commission began working to determine the possible impact of these new laws," said EAC Chair Donetta Davidson. "After careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle. The bottom line is that the research raises more questions than provides answers.

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007, public meeting. For more information about the public meeting agenda, transcript, and testimony go to http://www.eac.gov/Public_Meeting_020807.asp.

EAC's future research on this topic will be expanded to include more than one election cycle and to examine environmental and political factors and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements that require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identity.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information already collected as well as additional data from the states to develop this baseline.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

# # #

"Rosemary Rodriguez" <rosemaryrod2003@yahoo.com>
03/27/2007 02:20 PM

To jlayson@eac.gov, ddavidson@eac.gov, chunter@eac.gov, ghillman@eac.gov, rrodriguez@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov, jthompson@eac.gov, bwhitener@eac.gov, ekuala@eac.gov, stephanie.wolson@gmail.com, sbanks@eac.gov,
bcc
Subject Re: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

I think we should be prepared to answer a question that may go something like: *What are your specific objections/concerns with the methodologies utilized by Eagleton?*

----- Original Message ----
From: "jlayson@eac.gov" <jlayson@eac.gov>
To: ddavidson@eac.gov; [redacted] chunter@eac.gov; ghillman@eac.gov
Cc: twilkey@eac.gov; klynndyson@eac.gov; jthompson@eac.gov; bwhitener@eac.gov; ekuala@eac.gov; [redacted] sbanks@eac.gov; bbenavides@eac.gov
Sent: Tuesday, March 27, 2007 2:02:01 PM
Subject: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,
I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the $500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Jeannie Layson/EAC/GOV
03/29/2007 12:50 PM

To ddavidson@eac.gov, [redacted]
Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov
cc twilkey@eac.gov, klynndyson@eac.gov,
jthompson@eac.gov, Elieen L. Kuala/EAC/GOV@EAC,
[redacted], sbanks@eac.gov, Bert A.
bcc
Subject FOR YOUR APPROVAL: VoterID press release and Q&A

History: This message has been forwarded.

Commissioners,
Based upon the revised tally vote language, I have made edits to the press release and to the Q&A. Please let me know if you have any edits. I plan to release this tomorrow if the tally vote is completed by then. Also, please pay special attention to the following answer I have composed, which is in the Q&A document. I will notify you before issuing the press release.

Q: What are your specific objections/concerns with the methodologies utilized by Eagleton?
A: First of all, we agree with the contractor that we should examine more than one federal election. Regarding the methodologies, the contractor conducted two analyses that had different outcomes. The first analysis showed no statistically significant correlations. The second analysis, based on statistics from the Current Population Survey, showed some evidence of a correlation. Also, the categorization of voter identification requirements included classifications that do not require identification documentation, such as "state your name." The bottom line is that the research produced more questions than answers, and that's why EAC is expanding its efforts to examine this important issue.

EAGLETONQ&A.doc VoterID release 3-30-07.doc

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

OVERALL MESSAGE

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The preliminary research focused exclusively on the 2004 election, was insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors including, the many changes in state laws and regulations that have occurred since the 2004.

Q&A

Q: Why not release the draft fraud report, too?

A: EAC issued a final Voting Fraud and Voter Intimidation Report in December 2006, which included recommendations adopted by the Commission to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

In the case of the voter ID report, the Commission chose not to adopt a final report because it was determined that there was insufficient data to provide meaningful conclusions.

Q: You cited concerns with the contractor's methodology and analysis. Didn't your contract with Eagleton include specific language regarding these issues?

A: Yes, but in retrospect, perhaps we could have done a better job articulating how we wanted this research to be conducted.

Q: What are your specific objections/concerns with the methodologies utilized by Eagleton?

A: First of all, we agree with the contractor that we should examine more than one federal election. Regarding the methodologies, the contractor conducted two analyses that had different outcomes. The first analysis showed no statistically significant correlations. The second analysis, based on statistics from the Current Population Survey, showed some evidence of a correlation. Also, the categorization of voter identification requirements included classifications that do not require identification documentation, such as "state your name." The bottom line is that the research produced more questions than answers, and that's why EAC is expanding its efforts to examine this important issue.

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A: We did receive progress reports, and when we identified areas of concern, we discussed it with the contractor. It was because of these concerns that EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

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Q: If you were not satisfied with the final product, why did you pay for it?
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Q: EAC received this data in June of last year. What has taken so long to bring it to a conclusion?
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Deliberative Process Privilege

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

EAC to Launch Comprehensive Study of Voter ID Laws

For Immediate Release
March 30, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws after concluding that initial research focusing on only one election cycle was not sufficient to draw any conclusions. The Commission declined to adopt the report, but is releasing all of the data to the public. The information is available at www.eac.gov, and the Commission's statement regarding its decision is attached.

"After careful consideration of the initial research, the Commission decided this important issue deserves a more in-depth research approach, and that it should be examined beyond only one election cycle," said EAC Chair Donetta Davidson. "The Commission and our contractor agree that the research raises more questions than provides answers."

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting, including the agenda, transcript, and testimony go to http://www.eac.gov/Public_Meeting_020807.asp.

EAC's future research on this topic will be expanded to include more than one federal election, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements.

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# # #

EAC Statement on Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document[1] was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates[2] and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.[3]

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Declines to Adopt Draft Report

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

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[1] In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

[2] The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

[3] The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.[4] Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

Further EAC Study on Voter Identification Requirements

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
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- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

---

[4] See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Bryan Whitener/EAC/GOV
03/30/2007 02:40 PM

To
cc
bcc Elieen L. Kuala/EAC/GOV
Subject EAC to Launch Comprehensive Study of Voter ID Laws, 3-30-07

For Immediate Release
March 30, 2007

Contact:
Jeannie Layson
Bryan Whitener
(202) 566-3100

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The report and the research, conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, are available at www.eac.gov. The Commission's statement regarding its decision is attached.

"After careful consideration of the initial research, the Commission decided this important issue deserves a more in-depth research approach, and that it should be examined beyond only one election cycle," said EAC Chair Donetta Davidson. "The Commission and our contractor agree that the research conducted for EAC raises more questions than provides answers."

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* In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification.

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However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.* Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

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###

Bryan Whitener/EAC/GOV
04/03/2007 10:09 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (4-3-07, Tues)

Commissioners:

The following items are in the news.

##########

National
- Study Links Voter ID Rules to Non-Voting (audio includes Comm. Rodriguez interview; National Public Radio story)
- Civil rights enforcement called lax (Gannett News; Deborah Berry)

Florida
- Elections need paper trail, Nelson says
- Plan: Restore rights of felons
- Florida Governor Is Hoping to Restore Felon Voting Rights
- Felons may regain voting rights

Maryland
- State Poised to Become First To Scuttle Electoral

New Jersey
- State to repay $64,000 from voting event
- Feds ask NJ to return some hip-hop summit money
- N.J. fined for improper use of federal grants on hip-hop voter events

##########

National
Study Links Voter ID Rules to Non-Voting (audio includes Comm. Rodriguez interview; National Public Radio story)

Listen to Audio

by Pam Fessler

Read the Report
- Report to the U. S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements(Requires Adobe Acrobat)

All Things Considered, March 30, 2007 · A new study shows that tough new voter identification requirements appear to reduce the probability that someone will vote – and that the impact is greater on minorities. The study comes amid intense debate over whether ID requirements should be expanded.

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National
Civil rights enforcement called lax (Gannett News; Deborah Berry)

Justice agency's record scrutinized

Gannett News Service
April 3, 2007
By Deborah Barfield Berry

WASHINGTON -- Amid calls for the ouster of Attorney General Alberto Gonzales, Democratic lawmakers and civil rights groups are targeting the Justice Department's enforcement record on civil and voting rights.

"I realize the president has gotten a free ride for the last six years, but that is over," said Rep. Jerrold Nadler, D-N.Y., chairman of the House judiciary subcommittee on the constitution, civil rights and civil liberties. The panel recently held the first oversight hearing under the Democratic-controlled Congress.

Democrats say the Justice Department -- under scrutiny for its ousters of eight U.S. attorneys and its mishandling of national security letters -- has been lax in enforcing civil rights laws and slow to investigate cases, particularly on behalf of African Americans.

The Citizens' Commission on Civil Rights and the Center for American Progress released a report in March criticizing the Civil Rights Division's record on housing, voting and employment. The groups said the administration has narrowed civil rights protections and allowed enforcement to "wither and die."

Several groups are urging Congress to set up a select committee to review the agency's enforcement of civil rights laws.

Judiciary Committee Chairman Sen. Patrick Leahy, D-Vt., said he is concerned "political appointees have reversed long-standing civil rights policies and impeded civil rights progress," said spokeswoman Tracy Schmaler.

Justice Department officials defend their track record, saying the department sent an unprecedented number of monitors and observers to elections last fall, that it supported renewal of the 1965 Voting Rights Act and filed numerous cases on behalf of minority voters with language barriers.

"We will continue to closely investigate claims of voter discrimination and vigorously pursue action on behalf of all Americans whenever violations of federal law are found," Wan Kim, assistant attorney general at the Civil Rights Division, told the subcommittee.

Rep. Trent Franks, R-Ariz., ranking member of the judiciary subcommittee, praised officials for making "strategic decisions" on cases to pursue.

But civil rights groups say the division recently backed controversial proposals, including a Georgia plan that required voters to have government-issued photo identification cards and a Texas redistricting plan that diluted the strength of Latino voters.

Allan Lichtman, a political history professor at American University and a consultant to the Justice Department in the 1980s and 1990s, said he and other attorneys at the agency agreed the department shouldn't support the Texas redistricting plan. A political appointee rejected their recommendation, he said.

"I've just seen everything dry up under the Bush administration," Lichtman said.

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Florida

Elections need paper trail, Nelson says

The U.S. senator tells local officials he wants to end touch-screen voting.

David Damron
Orlando Sentinel
Sentinel Staff Writer
April 3, 2007

U.S. Sen. Bill Nelson met with county election supervisors Monday and pledged to make sure Florida and federal efforts to require a paper voting system go smoothly.

The seven election supervisors, from around the state including Central Florida, also sought assurances the reforms would not rely too heavily on local government funding.

Nelson and Florida Gov. Charlie Crist both are working on plans to create a verifiable voting system. Crist is touting a plan that would all but eliminate touch-screen machines in Florida, except for a small number to accommodate disabled voters.

Nelson filed a similar bill in February to apply nationwide. "People have to have confidence their vote was counted as intended," Nelson said.

Orange County Supervisor Bill Cowles said after the meeting that local election chiefs do not oppose the measures, but they want to make sure the reforms do not compete with each other and are passed quickly to avoid further confusion for voters or poll workers before the 2008 elections.

Sarasota County Election Supervisor Kathy Dent said her county likely would not be affected by legislation, because local voters approved a switch to a paper-ballot system.

A state audit said touch-screen machines in Sarasota County worked well in the 2006 election, but ballot design could have confused voters in a race between Republican Vern Buchanan and Democrat Christine Jennings, who lost by 369 votes. Sarasota County voters cast six times more blank ballots in that contest than voters in other counties in the race.

Critics called the audit a "whitewash."

Since the 2000 presidential election debacle, Florida has been a model for vote reforms, Nelson said. "What Florida does [in the current state lawmaking session] will be another indicator of what the nation should do."

Also Monday, Oviedo officials met briefly with Nelson to ask for federal funding for a widening project on State Road 426 and County Road 419. The project will cost $60 million, but only $20 million is available.

Sandra Pedicini of the Sentinel staff contributed to this report. David Damron can be reached at ddamron@orlandosentinel.com or 407-420-5311.

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Florida

Plan: Restore rights of felons

'Everybody deserves a second chance,' Crist says of campaign pledge

Orlando Sentinel

Jason Garcia and Maya Bell
Tallahassee Bureau
April 3, 2007

TALLAHASSEE -- Gov. Charlie Crist is expected to unveil a plan this week that could restore the civil rights, including the right to vote, of hundreds of thousands of convicted felons who have fulfilled their sentences.

Crist has scheduled a special meeting Thursday of the state Board of Executive Clemency, which could vote on a plan that would automatically restore civil rights for as many as 80 percent of all felons who have been released from prison.

"Everybody deserves a second chance," Crist said Monday.

The Republican governor pledged during his campaign to undo the Civil War-era law that denies most former convicts their civil rights -- which also include the right to serve on a jury and obtain a host of occupational licenses -- unless they complete a slow and sometimes impossible application process. Florida is one of three states that impose such a restriction.

The Governor's Office has been trying to build enough support for the idea among members of the clemency board, which is composed of Crist and the three-member state Cabinet. That includes Republican Agriculture Commissioner Charles Bronson and Democratic Chief Financial Officer Alex Sink, who have both expressed support for some form of automatic restoration, and Republican Attorney General Bill McCollum, a staunch opponent.

But the plan taking shape is already drawing fire from civil-rights activists who worry it won't go far enough.

Howard Simon, executive director of the American Civil Liberties Union of Florida, said officials are considering requiring that all ex-felons pay any restitution in full before their rights are restored.

Such a restriction, Simon said, would make a "charade" out of any effort to reform Florida's clemency system, which, Simon said, has left as many as 950,000 Floridians without their civil rights today.

It also would run contrary to the recommendations of a commission Jeb Bush appointed, Simon said.

Crist "clearly deserves an enormous amount of credit for trying to address this crisis -- and the numbers make it a crisis -- but it makes no sense to insist on payment first," Simon said.

"We're not saying ignore it [restitution] or overlook it. Just put people back to work first. If they get their civil rights back, they are eligible for close to occupational licenses -- from roofer to cosmetologist to barber."

Crist, however, said he has to devise a plan that wins enough support on the clemency board because attorneys have told him that he can't grant automatic restoration by himself through an executive order. Persuading the Republican-controlled Legislature to make the change would be "tough sledding," he said.

"I want to do the doable," Crist said. "I'm pushing as hard as I can to get as much as I can. But there's a point beyond which I cannot go."

People familiar with the discussions also said Crist's office was still negotiating Monday with Cabinet officers about which crimes would be covered by an automatic-restoration process. Some convicted felons, such as murderers and sex offenders, are certain to be excluded.

"It's still somewhat fluid," said Terry McElroy, a spokesman for Bronson. "I think everyone recognizes that there are certain crimes for which the state would likely not automatically restore civil rights."

Jason Garcia can be reached at jrgarcia@orlandosentinel.com or 850-222-5564. Maya Bell can be reached at 305-810-5003 or mbell@orlandosentinel.com.

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Florida

Florida Governor Is Hoping to Restore Felon Voting Rights

New York Times
April 3, 2007
By ABBY GOODNOUGH

MIAMI, April 2 – Hinting that a remarkable turnaround in state policy was near, Gov. Charlie Crist said Monday that he hoped to persuade members of the Florida cabinet this week to end the practice of stripping convicted felons of their right to vote.

Florida is the most populous of three states whose constitutions require withdrawal of voting rights from all convicted felons, and it has the nation's largest number of disenfranchised former offenders. The other two states are Kentucky and Virginia.

Felons in Florida who have served their prison and probation time can apply to have their voting rights reinstated, but the process can be time consuming and complex. Only a few hundred have their rights restored each year in Florida, where the American Civil Liberties Union says 950,000 remain disenfranchised.

Mr. Crist, a Republican, said that to win the support of some cabinet members, he might require former felons to pay whatever restitution they owe to victims before regaining their rights. Some civil rights groups, including the A.C.L.U., oppose such a compromise, but Mr. Crist said he had little choice.

“I want to do the doable,” he told reporters in Tallahassee. “I'm pushing as hard as I can to get as much as I can, but there's a point beyond which I cannot go.”

Only a constitutional amendment could formally end the ban, but under state law, the governor and cabinet – who also make up the state clemency board – could grant blanket clemency to everyone who completes their sentence. Mr. Crist needs two of the three cabinet members to sign off on the plan.

Alex Sink, a Democrat who is the state's chief financial officer, has said she supported modifying the ban. But Charles Bronson, the state's agriculture secretary, and William McCollum, its attorney general, Republicans, have opposed it.

Former Gov. Jeb Bush was adamantly against ending the ban, even though it contributed to problems in the 2000 presidential election. An unknown number of legal voters were removed from the rolls leading up to the election, after a company working for the state mistakenly identified the voters as felons. At the same time, some counties allowed felons to vote or turned away legitimate voters as suspected felons.

“I believe in my heart that everybody deserves a second chance,” Mr. Crist said. “And I'm hopeful that maybe later this week we'll have an opportunity to restore civil rights for Floridians and give them that right to vote.”

Howard Simon, executive director of the A.C.L.U. of Florida, said he thought Mr. Crist was focused on persuading Mr. Bronson to soften his stance. He said Mr. Bronson wanted a list of exceptions, of violent criminals who would not be eligible for voting rights. Mr. Crist said he would not grant automatic restoration to murderers and sex criminals.

Terence McElroy, a spokesman for Mr. Bronson, said Monday: “Commissioner Bronson continues to believe that people who commit violent felonies ought to be treated differently than others who do not."

Jenny Nash, a spokeswoman for Mr. McCollum, said he believed that "violent habitual offenders should not receive automatic restoration."

Mr. Simon said it made no sense to require former offenders to pay restitution to regain their civil rights.

"How can they be expected to pay it if the state keeps putting barriers in the way of allowing them to be re-employed?" he said. "You can put people on a payment plan, but get them back to work first."

Christine Jordan Sexton contributed reporting from Tallahassee, Fla., and Terry Aguayo from Miami.

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Florida
Felons may regain voting rights

Crist seems to have the Cabinet votes to fulfill his most controversial campaign promise.

St. Petersburg Times
By STEVE BOUSQUET
Published April 3, 2007

TALLAHASSEE - After weeks of behind-the-scenes lobbying, Gov. Charlie Crist appears to have the two votes on the Cabinet he needs to restore civil rights to many ex-offenders.

Crist has called a meeting Thursday of the Board of Executive Clemency to consider changing a system that thrust Florida into the national spotlight as a state with some of the highest barriers to citizenship for felons who have served their time.

Crist promised in his campaign to support automatic restoration of civil rights without hearings for most felons who have "paid their debt to society" and completed sentences, including probation. Convicted sex offenders would not be included.

But the latest snag in the long-running controversy is a requirement that some felons literally pay their debts, in the form of full monetary restitution to victims, before they can regain the right to vote, serve on a jury or hold various professional licenses.

"It's not everything I would like," Crist said. "But it's a huge step in the right direction, to at least get the ball rolling."

Howard Simon of the American Civil Liberties Union said it "defies common sense" to compel felons to pay restitution first, because the lack of civil rights prevents them from getting a job so they can pay restitution.

Simon cited a report by former Gov. Jeb Bush's Ex-Offender Task Force which found the lack of restoration of civil rights "a significant barrier to employment" in many cases.

"Don't pretend you're going to reintegrate ex-offenders into society if you're still creating barriers," Simon said.

Over the weekend, the ACLU launched an e-mail and letter-writing campaign in support of full restoration of civil rights when all "nonmonetary" terms of a felon's sentence are completed.

Under current law, felons must petition the clemency board to seek the restoration of their rights, but because the board meets only four times each year, the backlog of requests is enormous, about 35,000 people.

Reggie Garcia, a Tallahassee lawyer who specializes in clemency cases, said payment of restitution is not an issue in most clemency cases.

"I think the governor has shown tremendous good faith in bringing this forward," Garcia said.

It has proved to be one of Crist's most difficult political tasks.

Crist needs the votes of at least two of three Cabinet members, and Attorney General Bill McCollum strongly opposes automatic restoration of civil rights.

Spokesmen for the other two Cabinet members, Chief Financial Officer Alex Sink and Agriculture Commissioner Charles Bronson, said they support Crist's efforts to make restoration easier, and said payment of restitution should be a prerequisite.

The governor cited the case of Lisa Burford, who served 30 days in jail for stealing money from the bank where she once worked. A mother of four, she has not regained her nurse's license because of a felony, and still owes the bank $25,000.

"My heart bleeds for her," Crist said. "There's somebody who truly is trying to be productive and do the right thing. And we're going to say no to her?"

Crist told the St. Petersburg Times editorial board that the Clemency Board could waive the restitution requirement on a case-by-case basis.

"What we can do at clemency is wipe it away, forgive the debt," Crist said. "And that would be a possibility for her."

Times political editor Adam C. Smith contributed to this report. Steve Bousquet can be reached at bousquet@sptimes.com or 850 224-7263.

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Maryland
Maryland Poised to Become First To Scuttle Electoral

Washington Post
By Annapolis Notebook
Tuesday, April 3, 2007; B02

The House of Delegates approved a plan to effectively scrap the electoral college and elect presidential candidates by popular vote.

The Senate passed a similar bill last week, and the legislation is expected to head in the coming days to the desk of Gov. Martin O'Malley (D), who has indicated he will sign it.

Under the bill, Maryland's 10 electoral votes would be awarded to the winner of the national popular vote, instead of the candidate who wins the state. It would take effect only if states with a majority of votes in the electoral college agreed to do the same.

The proposal generated a lengthy debate on the House floor, where Democratic supporters said the change would give small states such as Maryland new attention from candidates.

"The current system does not treat every vote equally," Del. Jon S. Cardin (D-Baltimore County) said. "Maryland has become a spectator state. . . . Why would anybody be opposed to the winner of the popular vote being the president?"

Opponents said Maryland would be rushing into a huge change. "It's an affront to the Constitution," said Del. Anthony J. O'Donnell (R-Calvert), the House minority leader. "Are you prepared to allow someone else to determine where Maryland's votes in the electoral college go?"

Maryland would be the first state to approve the change. Eighteen Democrats joined 36 Republicans -- all but one in the House GOP delegation -- in opposing the bill, which passed 85 to 54.

"The fact is that all of [the candidates'] resources go into two or three states, and their votes have greater weight," House Speaker Michael E. Busch (D-Anne Arundel) said.

-- Lisa Rein

Campaign Funding Bill Delayed Again

A bill to provide public funding to Maryland legislative candidates' campaigns suffered a major blow yesterday when Sen. Ulysses Currie (D-Prince George's) moved to delay debate until Friday, possibly killing any chance of the bill being passed before the session ends Monday.

"It might be a bill we can't afford, considering where we are right now," Currie said, referring to the bill's price tag and the state's looming budget deficit.

Candidates would have to raise $6,750 in seed money to qualify for up to $50,000 for a Senate race or $40,000 for a House of Delegates run. The change could cost the state $500,000 a year. The program would be voluntary.

The goal is to make politicians less obligated to deep-pocketed campaign contributors by offering candidates money for their run for office.

Supporters said they found new momentum last week after the release of secret FBI recordings in the coming corruption trial of a former Democratic state senator from Baltimore County, Thomas L. Bromwell, who is accused of steering telecommunications legislation to help donors.

Advocates lobbied hard to get the bill to the Senate floor last week. A vote was delayed Friday, and Currie asked for an unusual four-day delay.

"I am shocked this bill is out here," said Sen. Alex X. Mooney (R-Frederick), who opposes campaign spending limits.

Senate President Thomas V. Mike Miller Jr. (D-Calvert) said: "There are a couple of others of us like that."

Sen. Paul G. Pinsky (D-Prince George's) was upset by Currie's move.

"Somebody doesn't want to record his vote," Pinsky said, after making chicken noises. "Unbelievable."

-- Ovetta Wiggins

From Delegate to the Governor's Cabinet

Yesterday was the first day on the job for Maryland's new deputy secretary of state, former Prince George's delegate Brian R. Moe.

Moe, a member of the House of Delegates since 1998, lost his reelection bid last year in the Democratic primary. He was introduced to his former colleagues yesterday on the floor of the chamber.

The secretary of state post was one of a few Cabinet jobs Gov. Martin O'Malley (D) had not filled since taking office in January. The office has several duties, including maintaining business filings, regulating the state's charities and promoting Maryland's role in international relations.

-- John Wagner

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New Jersey
State to repay $64,000 from voting event

Tuesday, April 03, 2007
BY RICK HEPP
Star-Ledger Staff

The state agreed yesterday to repay $64,000 in federal election grants an audit found were improperly used on two hip-hop summits championed by former Attorney General Peter Harvey to bolster voting awareness among teens.

An audit by the U.S. Election Assistance Commission, which monitors federal election funds, found the state misused $38,929 to feed students at the two shows and $25,585 to bus them to the Sovereign Bank Arena in Trenton. The state spent a total of $131,924 on the two events.

The commission issued a final determination yesterday requiring the state to repay the funds, which amount to a fraction of the $84.9 million New Jersey received from 2003 through 2005 to implement the Help America Vote Act of 2002.

"The audit found we owed them money," Attorney General's Office spokesman David Wald said. "We are accepting the recommendation of this audit, and we took their other recommendations very seriously and made some changes."

The shows attracted more than 6,000 students in 2004 and 2005 to watch recording artists Russell Simmons; the Rev. Run, of Run- DMC; The Game, and others promote voting.

They also attracted scorn from lawmakers who called the concerts a waste of time and resources when the state was having a difficult time implementing new voting procedures.

Harvey yesterday defended the event as being part of the state's effort to register more than 460,000 new voters since 2004. He added staff planning the hip-hop summits were supposed to have checked with federal officials before tapping the funds, which are allowed to be spent on voter education and outreach.

"The effort was certainly well worth it," Harvey said. "With no celebrities and no audience, students would not have been interested in the event or interested in registering to vote. And you have to get the students to the facility, and you have to feed them if you are hosting an all-day event."

The money was taken from federal funding provided through the Help America Vote Act of 2002, which Congress implemented for new voting technology after errors with Florida's punch-card ballots marred the 2000 presidential election.

The act created an independent commission to assist local and state election officials, to certify voting systems and to monitor the funding to make sure the cash is being used as intended.

The commission's Office of Government Integrity reviewed more than $84.9 million in federal funds New Jersey received from 2003 through 2005 and issued its findings last September. The commission's final determination yesterday was released after the commission received additional information from New Jersey.

Rick Hepp may be reached at rhep [redacted]

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New Jersey

Feds ask NJ to return some hip-hop summit money

By GREGORY J. VOLPE
GANNETT STATE BUREAU
April 2, 2007

TRENTON -- New Jersey must repay the federal government $64,514 for food and transportation costs association with former Attorney General Peter C. Harvey's Hip-Hop Summits aimed at getting young people to vote in 2004 and 2005.

The U.S. Election Assistance Commission, or EAC, released an audit today that said funds given out under the Help American Vote Act should not have been used for entertainment.

"EAC considers food provided to students at the summits and transportation provided to students to and from the summit as entertainment costs and not an allowable use of HAVA funds," the audit says. "In addition to being unallowable, EAC does not consider the costs reasonable since the summits were broadcast via the internet to other schools that did not incur food and travel expenses to obtain the same information."

Harvey could not immediately be reached at his private law office.

David Wald, spokesman for current Attorney General Stu Rabner said the money will be paid back.

Harvey spent $131,924 for summits in 2004 and 2005, enlisting hip-hop figures like Russell Simmons, Wyclef Jean and Joe Budden to promote voting among young people. They were not compensated for the appearance and participated in panel discussions and did not provide live entertainment.

There was no summit before the 2006 U.S. Senate election and "there are no plans for future summits," Wald said.

The 2004 summit was attended by 2,000 students the 2005 event was attended by 4,000 while the event was broadcast live over the Internet.

Donna Kelly, an assistant Attorney General, responded to auditors in November saying in 2004 presidential election, the state got 460,000 newly registered voters and a 50 percent turnout among those 18 to 25 years old.
Published: April 02. 2007 3:51PM

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New Jersey

N.J. fined for improper use of federal grants on hip-hop voter events

Posted by the Asbury Park Press on 04/3/07
BY GREGORY J. VOLPE
GANNETT STATE BUREAU

TRENTON – New Jersey must repay the federal government $64,514 after the U.S. Election Assistance

Commission found that former Attorney General Peter C. Harvey used grants to pay for food and transportation at hip-hop summits aimed at getting young people to vote.

The commission, known as EAC, deemed Harvey's Hip-Hop Summits conducted before the 2004 presidential and 2005 gubernatorial elections a creative way to educate voters, but it said states cannot use federal grants doled out under the Help America Vote Act for entertainment costs like food and travel.

"EAC considers food provided to students at the summits and transportation provided to students to and from the summit as entertainment costs and not an allowable use of HAVA funds," the audit released Monday said. "In addition to being unallowable, EAC does not consider the costs reasonable since the summits were broadcast via the Internet to other schools that did not incur food and travel expenses to obtain the same information."

New Jersey will not contest the findings and has no plans to continue the summits.

"There are no plans for future summits," said David Wald, a spokesman for Attorney General Stuart Rabner.

Wald said money will come from the department's budget, but didn't know from what line-item and was unsure whether it will be from this year's appropriation or next year's budget.

The summits were a marking point of Harvey's tenure, along with a reputation for not prosecuting public corruption. Last year, Gannett New Jersey reported that Harvey additionally spent $2.7 million in federal money producing voter awareness ads featuring hip-hop and rap artists and other celebrities – some of whom had run-ins with the law.

Harvey could not be reached Monday.

The two summits, which cost $131,924, drew between 2,000 and 4,000 young people to discussion panels with celebrities like Russell Simmons, Wyclef Jean and Joe Budden to promote voting among young people. Celebrities were not compensated for the appearance and did not provide live entertainment.

Of that total, federal auditors found $38,929 went for food and $25,585 was used to bus in students.

##########

Jeannie Layson/EAC/GOV
04/05/2007 04:53 PM

To Donetta L. Davidson/EAC/GOV, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc EAC Staff
bcc
Subject FYI ONLY: Today's media inquiries (04-05-07)

1. Matthew Murray of Roll Call interviewed Commissioner Hunter about the voter ID report. He asked her why the commission declined to adopt it, and she explained that we thought it was important to look at more than one year and that the commission had questions about the methodology -- two analyses produced two conclusions and the state comparisons (reading from the commission statement). She said it was the EAC's responsibility to conduct due diligence and make sure the data was accurate. He asked why it took so long to reach a decision, and that some groups were saying we purposely did not act before the Nov. elections. The commissioner explained that we were reviewing the data and during that time several independent experts also reviewed the information. He wanted to know if Eagleton discussed their methodology with us, and the commissioner said yes. He asked how much it cost, the commissioner told him $560,000, and explained that the contract also included research on provisional voting which resulted in a set of best practices. He asked how EAC will prevent this kind of thing from happening in the future, and the commissioner said we are going to take a much more thorough approach, including making sure the methodology is approved by everyone before the process begins and that we will be constantly updated as the research progresses. He asked if the research didn't produce what we thought it would, and she said the issue was that we had concerns about the methodology. She pointed out that the commission voted to make it public so people could examine it and come to their own conclusions. He asked if we had refused to release this in the past, and I explained that while we were reviewing the information it was a pre-decisional document, but that along with the commission's decision not to adopt the report, they took action to make it public. I pointed out to him that this was an unanimous decision reached by two dems and two reps, and that they also unanimously decided to make it public. I told him we had public meetings about this project, in which the consultants were asked questions about the methodology.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Bryan Whitener/EAC/GOV
04/09/2007 05:32 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Today's media inquiries (4-9-07, Mon)

Commissioners:

Today Paul DeGregorio was contacted by Adam Sitchko of the St. Louis Post Dispatch to get his reaction to the Roll Call article, and Paul relayed the conversation to EAC. Paul told the reporter that EAC always has a responsibility to conduct due diligence for every research project, including the one on voter ID. He said EAC has a responsibility to make sure anything it releases -- anything with EAC's name on it -- is accurate. The reporter asked why it took so long to release it, and he said it was because we were reviewing the data, and even had independent panels review the data also. The reporter asked about the allegations that the commission purposely decided not to release it before the Nov. elections, and he said no. He said it was a bipartisan effort throughout, which took more time because the commission had questions about the methodology. Paul said there are groups out there who want to inject politics into the discussion, and they will not be happy with the commission taking the time to look at all sides of every issue. And they also want certain results, and if they don't get them, they will not be satisfied. He said that's unfortunate, but the bottom line is that even though the commission didn't adopt the report, they released it so the public could reach their own conclusions.

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Gavin S. Gilmour/EAC/GOV
04/17/2007 05:27 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc Sheila A. Banks/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV, Karen
bcc
Subject FYI--Letter from Serrano

History: This message has been forwarded.

All,

Today we received a faxed copy of a letter signed by Jose Serrano as Chair of the Financial Services and General Government Appropriations Subcommittee. The Chairman urges the EAC to publicly release the full draft version of the Provisional Voting report prepared by Eagleton. The letter states that the Congressman was pleased with our decision to engage our Inspector General and to release the draft version of the Voter ID study (though he was disappointed that we did not adopt it).

Chairman stated in his letter that if we do not decide to release the draft report, he would like an update regarding the study's status, time line for release and a statement regarding why the EAC would deviate from the "precedent" it has now set in releasing draft studies.

It is my understanding that this report was made public at the Board of Advisor and Standards Board meetings in May 2006. I do not know if any changes were made to the document after that time. Perhaps Karen can provide additional information regarding this concern. It is also my understanding that this document has been released to third parties upon request under FOIA. Additionally, I believe a best practices document was created by the EAC based on the research. That document is on our website. Also, Stephanie informed me (and Karen confirmed) that the study is posted on Eagleton's website.

A copy of Serrano's letter is attached.

GG

Serrano Letter.pdf

Gavin S. Gilmour
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MICHAEL HONDA, CALIFORNIA
BETTY McCOLLUM, MINNESOTA
STEVE ISRAEL, NEW YORK
TIM RYAN, OHIO
C.A. "DUTCH" RUPPERSBERGER, MARYLAND
BEN CHANDLER, KENTUCKY
DEBBIE WASSERMAN SCHULTZ, FLORIDA
CIRO RODRIGUEZ, TEXAS

Congress of the United States

House of Representatives

Committee on Appropriations

Washington, DC 20515-6015

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CLERK AND STAFF DIRECTOR
ROB NABORS

TELEPHONE:
(202) 225-2771

April 17, 2007

The Honorable Donetta Davidson
Chair
United States Election Assistance Commission
1225 New York Avenue Northwest, Suite 1100
Washington, DC 20005

Dear Chairwoman Davidson:

I am writing to urge the Election Assistance Commission to publicly release the full draft version of its commissioned report on provisional voting. Given the concern by members of this subcommittee, as well as other members of Congress, over the issue of transparency at the EAC, I believe that it is in the best interest of the taxpayers that they be able to see the full draft report on this topic.

As you know, the EAC commissioned a report from the Eagleton Institute of Politics at Rutgers on both voter identification and provisional voting. At some point, these two reports were split from one another. On March 30, 2007, the EAC released the draft report on voter identification, entitled "Best Practices to Improve Voter Identification Requirements."

I was pleased with the positive precedent set by the EAC with the release of the draft report on voter identification. Although I was disappointed that the Commission did not endorse the results of the study, I strongly believe that releasing the full draft helped dispel concerns of transparency and partisanship, and allowed the public at large to help identify areas that need more in depth review. I also believe that you have made the right decision in asking the Inspector General to conduct a review of the Commission's contracting procedures with respect to recent reports. I am hopeful that the review will conclude that greater openness and transparency is of utmost importance.

Given your request to the Inspector General and the recent controversies over the release of the draft voter identification report, as well as the draft voter fraud and intimidation report, it would be in the best interest of the Commission to release the draft report on provisional voting. Releasing the full draft version of this report would help to ensure that the EAC remains a transparent organization and dispel concerns that the Commission has been acting in a partisan manner.

Should the Commission decide not to release the draft report, I would then request an update as to the status of this report, a timeline for its release, as well as any compelling reasons as to why the EAC should deviate from the precedent you have now set. The public deserves the opportunity to decide whether the report is both rigorous and accurate.

As I mentioned in the hearing we held just over a month ago, I strongly believe that the EAC will be one of the most important government entities in the run up to the 2008 elections. It is of vital importance that we ensure that the EAC remains, in appearance and in fact, a bipartisan, independent agency- so that voters and election administrators across the country can trust its efforts to ensure that federal elections are safe, secure, accurate, and fair. Releasing the provisional voting report would go a long way towards that goal, and I look forward to your response.

Sincerely,

José E. Serrano
Chairman, Financial Services and General
Government Appropriations Subcommittee

Rosemary E. Rodriguez/EAC/GOV
04/17/2007 05:31 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C.
cc Sheila A. Banks/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,
bcc
Subject Re: FYI--Letter from Serrano

History: This message has been forwarded

Dear all,

I wonder how many more requests like this are waiting in the wings? Is there any way we can anticipate these requests? How many reports are completed and outstanding? May I request a briefing?

Thanks.

RER
Gavin S. Gilmour
----- Original Message -----

From: Gavin S. Gilmour
Sent: 04/17/2007 05:27 PM EDT
To: Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey
Cc: Sheila Banks; Juliet Hodgkins; Elieen Kuala; Jeannie Layson; Karen Lynn-Dyson; fms.eacfabre@yahoo.com
Subject: FYI--Letter from Serrano

All,

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Chairman stated in his letter that if we do not decide to release the draft report, he would like an update regarding the study's status, time line for release and a statement regarding why the EAC would deviate from the "precedent" it has now set in releasing draft studies.

It is my understanding that this report was made public at the Board of Advisor and Standards Board meetings in May 2006. I do not know if any changes were made to the document after that time. Perhaps Karen can provide additional information regarding this concern. It is also my understanding that this document has been released to third parties upon request under FOIA. Additionally, I believe a best practices document was created by the EAC based on the research. That document is on our website. Also, Stephanie informed me (and Karen confirmed) that the study is posted on Eagleton's website.

A copy of Serrano's letter is attached.

GG

[attachment "Serrano Letter.pdf" deleted by Rosemary E. Rodriguez/EAC/GOV]

Gavin S. Gilmour
Deputy General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Jeannie Layson/EAC/GOV
04/17/2007 05:45 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, "Staci Fabre"
bcc
Subject Re: FYI--Letter from Serrano

History: This message has been forwarded

Commissioner,
The communications audit identified many of the outstanding issues. I have pasted the vulnerabilities section into the attached document.

Comm. audit vulnerabilities.doc

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Rosemary E. Rodriguez/EAC/GOV

Rosemary E. Rodriguez/EAC/GOV
04/17/2007 05:31 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
cc Sheila A. Banks/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, "Staci Fabre" [redacted]
Subject Re: FYI--Letter from Serrano

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A copy of Serrano's letter is attached.

GG

[attachment "Serrano Letter.pdf" deleted by Rosemary E. Rodriguez/EAC/GOV]

Gavin S. Gilmour
Deputy General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

Vulnerabilities

➢ Provisional Voting & Voter ID

- There is media interest in this report but internal EAC officials express concern over the potential for a perceived lack of data or "meat" in the report, which is likely to invite criticism.
- Important Dates:
  - Final reports in EAC staff review
  - Commissioner statement that this report would be out on March 8, 2007

➢ Cost of Studies

- EAC needs to be prepared to answer questions about the cost of two studies.
  - Voter Fraud and Intimidation - $100,000
    - Report is completed, next steps under review at EAC
  - Effective Design for Election Administration - $681,400
    - Final report due from contractor March 30, 2007

➢ HAVA Funds State Reports

- In its first review of the state reports EAC discovered widespread mistakes. Corrections requests were mailed in December and EAC is currently reviewing resubmitted reports.
- Deadline for reports covering last year:
  - Title I – End of February 2007
  - Title II – End of March 2007
- State funds reports have not been made readily available, they have only been given out through FOIA requests.
  - Moving forward EAC should consider making the reports available on the EAC website.

➢ Report to Congress on State Spending

- Report will cover what the states have spent, and what they have done with the money, over the past three years.
- Important Date:
  - Due to Congress end of April 2007

➢ State Audits

- States are audited under three types of audits – the Single Audit, the Regular Audit and the Special Audit.
- Currently the Inspector Generals Office puts all audits on the EAC website, and EAC is working to make audit resolution documents function as stand alone documents.
  - Doing so is important and could be especially helpful for media and stakeholder outreach providing a clear and concise "here's the problem, these issues were identified, these resolutions were issued."

➢ Title I. Section 102 Payments

- States had to send certification documents to EAC to prove spending, and upon review of certifications some states were required to pay money back. EAC needs to be prepared for two possible challenges:
- Certifications
    - Certifications are scheduled to be issued by the end of May, and states can appeal EAC decisions.
    - To meet its goal of processing appeals by end of the summer, EAC must stick to submission deadlines and its own internal deadlines.
    - Decisions will be posted online after they are sent to the states and EAC needs to be prepared to conduct state official outreach.
- There are currently three states that EAC must prepare for in terms of possible negative media coverage.
    - Arizona - EAC may face more dialogue with AZ due to its disagreement over a proof of citizenship requirement when registering to vote. Arizona does not realize yet that they will have to repay Title I funds – approximately $250,000 due to GSA miscalculating their precinct numbers. EAC was not aware until they filed their certification documents. This situation will require significant commissioner outreach.
    - New York - Did not meet deadline for spending and will have to repay all of their funds – approximately $50 million. The state has not been cooperative in the past; DOJ has sued them over HAVA compliance. EAC foresees problem getting the funding back which may lead to media/stakeholder scrutiny.
    - $53 million coming back to EAC - EAC believes that Congress did not anticipate such a large amount; 1/3 of states that received the funds have amounts to pay back. May face media/stakeholder scrutiny over program functionality.

➢ **Title I. Section 102 Funds Redistribution to Title II**

- EAC will tell states, based on a formula, how much funding they will be receiving from the redistribution of Section 102 funds, and states will have to revise their state plans to account for the new funding.
- Once EAC has total funds from states needing to repay, it will take approximately 4 months to redistribute those funds under Title II.
- As the process could prove lengthy and complicated, EAC needs to be prepared for media and stakeholder outreach.

➢ **National Voter Registration Act**

- EAC is required to issue regulations about registration form design but has not as of this time. Issuing regulations on registration forms is a lengthy process, so EAC needs to start immediately to address the issue before the beginning of the Presidential primaries.
- NVRA says that EAC has to develop a form and submit to Congress every two years a report assessing the impact of the Act. EAC did a report in '05 and will be issuing another report this year but has not addressed form changes.

- Form redesign has the potential to have a huge impact on the process. FEC held regional hearings when a new form was developed, and EAC would most likely need to do the same.
- Delay could produce several negative outcomes if not addressed quickly:
    - Media coverage – Why has this taken so long? Why now?
    - Changes right before the primaries could produce controversy

➢ Labs and Systems Certification

- To leverage labs certification EAC should institute a notification and preparation policy with Burson-Marsteller for the 30-day accreditation window once EAC receives info from NIST.
- EAC has the opportunity through CYSTECH labs in Denver to conduct proactive media outreach.
    - The test lab has agreed to open itself to media - a good opportunity to create some "sunshine" on the testing process.
- EAC needs to prevent late system accreditation problems and possible blame in the public eye and with stakeholder groups. To do so, the following issues need to be addressed/actions need to be taken:
    - System accreditation takes approximately 6-8 months. EAC must set a hard deadline of June 2007 to avoid last minute system certification issues.
    - Engage the media
        - Work with the vendor community to conduct media outreach to counter the negative news cycle and leverage those vendors that have positive stories to tell and are open to press outreach.
        - Show what and how EAC is doing its testing. Use program examples such as FCC cell phone emissions testing and FAA airplanes testing.
        - Engage the blogger community
    - Engage the Secretaries of State
        - EAC needs to be particularly cognizant of the California Secretary of State who appears to be anti-voting system change; may want to focus on California-specific outreach program.
        - EAC should leverage possible positive stories/third party-spokespeople through the states of: Washington – Sam Reid; Texas – Ann McGeehan, Director of Elections; Maryland – Linda Lamone, Elections Office.
    - Leverage Cost-to-Test public education meeting with elections officials, NIST, manufacturers, legislators and advocacy groups.
        - Meeting TBD late April/early May
    - Leverage semi-annual vendor community/test lab meetings to focus outreach to Secretaries of State, election directors associations and election centers.
        - TBD Summer

➢ Testing and Certification - National Association of State Elections Directors

- Prior to EAC, the National Association of State Elections Directors handled the testing of voting machines. EAC has some of the testing results but does not currently have a thorough inventory of what documents they have, where the documents are located and what exactly the testing results say.
- These testing results, and a lack of information internally, is a serious vulnerability and it is imperative that an accurate inventory and a thorough analysis of the reports be completed as soon as possible.

➢ **Systems and Labs Transparency Issues**

- EAC not releasing source codes can be problematic for the agency.
  - EAC should develop a clear and concise public statement on source codes to be used for media questions and stakeholder questions.
- Lab accreditation conflict of interest questions have been raised. EAC needs to address this question with outreach to media and stakeholders, specifically on legislation introduced in the House.
    - HR 811 – U.S. Rep. Rush Holt
    - Possible Senate companion bill to be introduced by Feinstein or Nelson

Caroline C. Hunter/EAC/GOV
04/17/2007 06:44 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Rosemary E.
cc Sheila A. Banks/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,
bcc
Subject Re: FYI--Letter from Serrano

History: This message has been forwarded.

If we release every single thing that comes in the door every contractor will have a platform to shop their "research" as they see fit at taxpayers expense. Further, I see no need for a Commission, there would only be a need for a research director to dole out government contracts. I am amazed that a "respected" academic institution would behave in this manner.

Gavin S. Gilmour
----- Original Message -----

From: Gavin S. Gilmour
Sent: 04/17/2007 05:27 PM EDT
To: Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey
Cc: Sheila Banks; Juliet Hodgkins; Elieen Kuala; Jeannie Layson; Karen Lynn-Dyson; [redacted]
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Gavin S. Gilmour
Deputy General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100

Washington, DC 20005
(202) 566-3100

Bryan Whitener/EAC/GOV
04/26/2007 10:16 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (4-26-07, Thurs)

Commissioners:

The following items are in the news.

##########

National
- 'Election Fraud' Behind Firings of U.S. Attorneys (EAC mentioned)
- Hill Presses on Investigations (Roll Call)
- Diebold loses $5.9 million in first quarter (losses from elections and lottery systems; evaluating whether to keep elections)

California
- Riverside Elections chief pledges new security

Puerto Rico
- Critics fault Bush plan for vote on Puerto Rico

Texas
- Switch causes voting 'kinks'

Vermont
- Senate OKs instant runoff voting

##########

National
'Election Fraud' Behind Firings of U.S. Attorneys (EAC mentioned)

Marie Cocco
Washington Post Writers Group
HispanicBusiness.com
April 25, 2007

WASHINGTON -- The fiasco over the fired U.S. attorneys started out as a footnote.

"The president recalls hearing complaints about election fraud not being vigorously prosecuted" and "may have" mentioned this to Attorney General Alberto Gonzales, White House spokeswoman Dana Perino admitted -- after it became impossible to deny that crass politics, not job performance, was at the root of the imbroglio over dismissed federal prosecutors.

Republicans claim, loudly and regularly, that an army of ineligible voters -- illegal immigrants, convicted felons, dead people -- has been invading polling places, diminishing the value of honest voters' sacred ballots. They make the charge in states where the administration of elections is highly competent, and in states where it is grossly incompetent. It is, of course, leveled against Democrats and their supporters.

The charges are almost invariably debunked -- by courts, by prosecutors, by state elections officials and by local newspapers that probe beyond partisan screeching.

"There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, 'dead' voters, noncitizen voting and felon voters," says a May 2006 report to the U.S. Election Assistance Commission. The bipartisan commission issued a follow-up in December saying there was "no consensus" about fraud and intimidation at the polls and the entire matter deserves study.

The consultants' study refutes another common Republican claim -- that false registration forms are leading to rampant fraud. The study even cites Craig Donsanto, chief of the Justice Department's election crimes branch, as saying "the number of election fraud related complaints has not gone up since 2002." He also says the "proportion of legitimate to illegitimate claims of fraud" is unchanged.

The Justice Department's own statistics show that of 87 ballot-fraud convictions obtained since the department launched its "voter integrity" initiative in 2002, 17 were for noncitizen voting and another six were for multiple voting. Most of the cases involved vote-buying schemes hatched by local politicians in Kentucky, West Virginia and elsewhere.

So, with 122 million votes cast in the 2004 elections, and about 83 million cast last November, what are the statistical chances that some votes are fraudulent? You do the math.

And what about all the sensational claims?

Take the 2004 Washington state gubernatorial election, which appears to figure in the dismissal of former U.S. Attorney John McKay. When the skintight race flipped to Democrat Christine Gregoire after a recount, Republicans cried foul. But after six months of legal investigation and a two-week trial, a county court judge rejected every Republican claim. The Republicans didn't appeal.

In Ohio, some Republicans after the 2004 presidential election circulated stories of dead voters and those who showed up to vote several times. But a study by the state's League of Women Voters and a group representing the homeless found that of the 9 million votes cast in Ohio in 2002 and 2004, a total of four were deemed ineligible or fraudulent by the Board of Elections or local prosecutors.

In Connecticut, state officials became alarmed when the Republican National Committee claimed that 54 residents had voted twice -- in Connecticut as well as in another state -- in the 2000 election. But a probe by the secretary of state discovered that most hadn't voted in Connecticut at all, while some had voted in Connecticut but not in the other state. Four had birth dates different from those supplied by the RNC. In New Jersey, Missouri, Michigan and elsewhere, hot claims of fraud have likewise turned out to be hot air, according to an examination of the cases.

But the vote-fraud folklore serves its purpose. It enables Republicans to push through state requirements for photos and other forms of voter identification, rules that depress turnout and impact elderly and minority voters -- that is, Democrats -- most seriously. This is the real fraud.

##########

National
Hill Presses on Investigations (Roll Call)

Roll Call Staff
By Paul Singer,
April 26, 2007

Over Republican objections, Democrats on Wednesday approved a handful of subpoenas to force testimony by administration officials and allies — and to produce e-mails from GOP computers — on issues ranging from the firing of U.S. attorneys to the use of pre-war intelligence.

The House Oversight and Government Reform Committee approved two subpoenas for e-mail records from the Republican National Committee, after rejecting Republican amendments to limit the scope of the records demanded, extend the same request to the Democratic National Committee and issue a separate subpoena to former Clinton National Security Adviser Sandy Berger to discuss his mishandling of presidential documents. Berger has admitted to removing documents from the National Archives during his preparations for testimony before the 9/11 commission.

The committee also approved a subpoena to require Secretary of State Condoleezza Rice to testify on May 15 about what she knew regarding a now-discredited claim in President Bush's 2003 State of the Union address that Saddam Hussein was attempting to procure nuclear material from Niger.

Oversight and Government Reform Chairman Henry Waxman (D-Calif.) sought to distinguish the subpoenas from what he called the misuse of the subpoena power by the committee's two prior Republican chairmen — who both sat next to Waxman as he spoke. Waxman belittled the blizzard of subpoenas issued by former Chairman Dan Burton (R-Ind.) during the Clinton administration and said former Chairman Tom Davis (R-Va.) failed to issue enough subpoenas of the administration during his tenure at the helm. Waxman noted that committee rules allow the chairman to issue subpoenas unilaterally, as Burton often did, but said he wanted to establish a precedent of allowing members to debate and vote on subpoenas before they are issued.

Waxman's subpoenas to the RNC are intended to determine whether White House officials used political accounts at the RNC to conduct official government business. Waxman contends that in three ongoing investigations — regarding a political briefing given to senior staff at the General Services Administration, the firing of eight U.S. attorneys and the Jack Abramoff lobbying scandal — White House officials appear to have used their RNC accounts to avoid the record retention requirements that govern the White House e-mail system under the 1978 Presidential Records Act.

Rep. Darrell Issa (R-Calif.) used that concern as the basis for his amendment suggesting that the committee should subpoena from the DNC the same type of records it is seeking from the RNC. Issa said that to determine whether there is a problem in the implementation of the Presidential Records Act, the committee should compare implementation of the act under the current White House with the Clinton administration's compliance with the act.

Waxman ruled the amendment out of order, arguing that there has been evidence of improper e-mail communications in the RNC accounts but no related evidence of misuse of the DNC accounts. Waxman also pointed out that under Burton's tenure, the DNC had turned over more than 600,000 pages of documents to the committee.

The committee also released a letter from the RNC's attorney listing 36 White House employees who have or had RNC accounts, including Deputy Chief of Staff Karl Rove, Counselor to the President Dan Bartlett and Peter Wehner, who heads the Office of Strategic Initiatives, which National Journal has described as an "in-house, White House think tank."

RNC Chairman Mike Duncan issued a statement Wednesday alleging that Democrats "will stop at nothing short of the entire Republican National Committee playbook for 2008 in their search for documents. While we continue to cooperate to the most appropriate level, we fully expect this Democrat fishing expedition to continue for the entire two years of their time in the majority."

Republicans also objected to the Democrats' plan to subpoena Rice, arguing that she has more important things to do than come to the committee to testify about pre-war intelligence. On May 15, Rice is supposed to be in the Middle East meeting with Israeli and Palestinian leaders, the Republicans said.

Davis and other Republicans repeated the theme that the Democrats' questions already have been "asked and answered" by Rice in other venues, particularly in her confirmation hearing when she was nominated to become secretary of State. "This is just politics in its rawest form," Davis said.

But Democrats argued that the explanations previously offered dealt with mistakes made by the intelligence agencies. "There has been no inquiry about what went wrong inside the White House," Waxman said.

While Waxman's committee was voting — strictly on party lines — to approve the subpoenas, the House and Senate Judiciary committees also were voting to authorize subpoenas of administration officials. The House committee, with the reluctant approval of ranking member Lamar Smith (R-Texas), agreed to provide immunity and compel the testimony of Monica Goodling, the former Justice Department liaison to the White House who has said she would invoke her Fifth Amendment rights not to speak if she were called to testify before the committee. The immunity agreement would eliminate her ability to cite self-incrimination as a reason not to testify, sources said.

The Senate committee, meanwhile, authorized a subpoena for Sara Taylor, a Rove deputy who was involved in the decision to fire the U.S. attorneys. Judiciary Chairman Patrick Leahy (D-Vt.) and ranking member Arlen Specter (R-Pa.) also sent a sharply worded letter to Attorney General Alberto Gonzales asking him to provide "within a week" better answers to the dozens of questions to which he replied that he could not recall during his testimony before the committee April 19. As a result of Gonzales' inability to provide answers to those questions, "the Committee's efforts to learn the truth of why and how these dismissals took place, and the role you and other Department and White House officials had in them, has been hampered," the Senators wrote.

The Senate and House Judiciary committee votes do not necessarily mean the subpoenas will be issued. Democrats on those committees point out that they may still be able to negotiate voluntary testimony from witnesses. But the House Oversight and Government Reform Committee immediately began processing its subpoenas and issued them late Wednesday.

##########

National

Diebold loses $5.9 million in first quarter (losses from elections and lottery systems; evaluating whether to keep elections)

Akron Beacon Journal
By Jim Mackinnon
Beacon Journal business writer
April 26, 2007

Green maker of ATMs says it needs more time to decide what to do with election machines unit

More money went out from automated teller machine maker Diebold Inc. than the company took in for the first three months of the year.

And as for the future of its controversial election machines division -- well, the polls are still open, executives said Wednesday.

The Green company reported it lost $5.9 million, or 9 cents a share, on revenue of $628.4 million for the first quarter ending March 31.

The loss was primarily due to restructuring charges of $21.4 million related to a factory closing in France that reduced earnings by 32 cents a share.

If the plant closing charges were excluded, Diebold said it would have earned 23 cents a share. Diebold reported net income of $12.7 million, or 18 cents a share, for the first quarter of 2006.

Shares of Diebold fell $1.04, or 2.1 percent, to $48.96 by the close of trading at the New York Stock Exchange.Shares are up 5.6 percent since Jan. 1, including reinvested dividends, and are up 19.2 percent from a year ago.

Overall revenue for the first quarter of 2007 was up 0.8 percent from the same period a year ago.

``I am pleased with the steady progress we made during the first quarter, as we expected the first half of this year to be challenging," Thomas Swidarski, president and chief executive officer, said in a prepared statement.

Software is a key growth area for the company, Swidarski told analysts Wednesday. He said Diebold expects to make ``strategic announcements" in the coming weeks.

As Diebold closed its factory in Cassis, France, where it made ATMs, it increased production at a new plant in Budapest, Hungary, where it expects to make 10,000 of its Opteva ATMs this year.

Diebold said it also continues to evaluate Diebold Election Systems, its Texas-based electronic voting business. Election systems revenue fell by $22.6 million for the quarter.

The company's touch-screen voting machines have been criticized as being potentially vulnerable to tampering. Diebold has defended its election machines, calling the criticism invalid and unfair.

Diebold said it needs more time to decide what it will do with Diebold Election Systems, which it expects will take in between $185 million to $215 million this year. Diebold in 2002 bought Global Election Systems and subsequently renamed the business.

``We are working diligently on this effort, and we will communicate our strategy as soon as possible," Swidarski said. ``We will do our best to ensure than any course of action we take will be in the best possible interest of all our customers, employees and shareholders."

Analysts and others have suggested that Diebold may spin off its election systems division.

``We believe a separation via sale or spinoff could unlock some value for shareholders while also relieving the company of the negative publicity that this business has periodically generated," Cathay Financial analyst Steven McSorley told Bloomberg News.

``What they are really saying is that they want to find someone they can sell it to at the right price," Gil Luria, a Wedbush Morgan Securities analyst, told Bloomberg News. ``That also means that if they can't do that, they are going to announce they are going to hang onto it."

Election systems revenue of $7.9 million for the first quarter of 2007 was down 74.2 percent from the $30.4 million in revenue reported for the same period in 2006. Company executives told analysts they expect elections business revenue to pick up in the second half of the year.

The company also said its Brazilian lottery systems business revenue dropped $18.6 million compared to a year ago.

The company said it expects revenue growth for the year to be between 3 percent and 5 percent. It expects to earn between $2.15 to $2.25 a share for the year.

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##########

California
Riverside Elections chief pledges new security

The North Californian
By: CHRIS BAGLEY - Staff Writer
April 24, 2007

RIVERSIDE -- Riverside County is introducing a number of procedures aimed at making electronic voting more secure, the county's chief elections official said Tuesday.

Those procedures will include several additional safeguards against tampering with the computerized voting terminals in the days before an election. Registrar of Voters Barbara Dunmore said employees will drop off the voting terminals at poll sites later than in the past, thereby shortening a window that security advocates have derided as "sleepovers."

The terminals will also be strapped together and locked in a way that will prevent them from being opened, Dunmore said.

Individual polling places will also use clear plastic cases on election night to deliver electronic records of the votes to the registrar's office in Riverside, Dunmore said. That measure appears to respond to complaints of potential security breaches in what's known as the "chain of custody," the series of election workers who bundle and deliver each memory cartridge to a central counting facility.

Security advocates have noted that the opaque sacks currently in use require election workers to remove and inspect individual cartridges by fumbling around inside, at least theoretically providing an opportunity to replace a legitimate memory cartridge with one containing bogus votes or even a computer virus.

"I think we're making great strides in the chain-of-custody and security areas," Dunmore told the county Board of Supervisors on Tuesday. "As always, we learn from public comment."

The announcement came amid a pair of wide-ranging reviews conducted by state officials and a local advisory panel. Several minutes before Dunmore spoke, members of the local Election Review Committee briefed supervisors on the first three months of their own review of local voting procedures. Supervisors created the panel after paper shortages helped cause hourlong delays on Nov. 7 and 100,000 absentee ballots remained uncounted nine days afterward.

A separate review by newly elected Secretary of State Debra Bowen is now scrutinizing the touch-screen voting systems used in Riverside and 20 other California counties, and the paper-based systems used in the state's remaining 37 counties. Most of those systems, known as optical scans, involve paper ballots that voters mark with ink and then submit to be counted electronically.

Supervisors and Southwest County voting-security activists praised the local panel, saying that its five members have appeared thorough and circumspect in their review. An interim report by the panel Tuesday included a sampling of input from Dunmore and from citizens who turned out at three public hearings, but gave little hint of what recommendations the panel might make when its work concludes this summer.

Former Supervisor Kay Ceniceros, who has led the panel, said the panelists have yet to analyze the technical details of electronic voting, while also noting that it has been "the star issue" at public hearings on the matter. She cited "a passionate difference of opinion between people who fear electronic voting and those who want to see it continue into the future."

Tom Courbat, a Murrieta resident and leader of the activist group Save R Vote, praised Dunmore's new security measures in an interview, but clashed Tuesday with supervisors over Bowen's review. Bowen, a

Democrat, campaigned against incumbent Republican Bruce McPherson partly on her skepticism of electronic voting systems and on criticism of McPherson's oversight of the systems.

While Bowen has not explicitly pledged to ban Riverside County's Sequoia Edge II system or any other particular system, she has said that her review could lead her to do so, a possibility that supervisors and Save R Vote members alike acknowledged Tuesday.

Courbat urged supervisors to sell Riverside County's 3,700 voting terminals, which it purchased at about $4,000 apiece, before the 20 other counties flood the market with theirs.

"If you sell them now to, say, Pennsylvania, you might get 50 cents on the dollar," Courbat said. "If you wait until August, you might get pennies on the dollar.

Supervisors and County Executive Officer Larry Parrish expressed disbelief at what several called a change of position. Last year, before Bowen was elected, Courbat and members of his group had urged the Board of Supervisors to invest in new security measures for the voting machines and absentee ballots. And Tavaglione hinted, for the second time in a month, that he considers Bowen's judgment "political" and predetermined.

"Government doesn't stop while we take under review someone's personal agenda," Tavaglione said.

-- Contact staff writer Chris Bagley at (951) 676-4315, Ext. 2615, [redacted]

##########

Puerto Rico
Critics fault Bush plan for vote on Puerto Rico

Orlando Sentinel
Tamara Lytle
Washington Bureau Chief
April 26, 2007

WASHINGTON -- The Bush administration on Wednesday called for a Puerto Rican vote on the island's political status that proponents of commonwealth status say is biased against them.

The House Resources Subcommittee on Insular Affairs heard from top advocates of three models -- statehood, independence and commonwealth -- as it weighs legislation to give Puerto Ricans a vote on their future.

Some lawmakers fired back at the administration, saying its task force on the subject lacked input from Puerto Ricans.

Gov. Anibal Acevedo Vila said he was not optimistic that anything will pass because of the deep divisions among Puerto Ricans on the topic. "If you yield to the tricky games proposed by some politicians, the process will lose credibility, or worse, die stagnated."

Acevedo Vila, a proponent of enhancing the current commonwealth status, favors a constitutional convention that would leave it to Puerto Rican delegates to lay out the choices for voters. The Bush administration, by contrast, said Puerto Rican voters should be presented only with choices laid out by Congress that are legal under the U.S. Constitution.

"We will work with Congress to ensure that any process to solicit the views of the people of Puerto Rico is transparent, understandable and fair," said Kevin Marshall, Justice Department deputy assistant attorney general. His testimony was the first comment from the Bush administration since the task force he led recommended a two-stage voting process in late 2005.

Under a bill that is similar to the task-force recommendations, Puerto Ricans would first choose whether to keep the status quo. If that is rejected, they would choose between statehood and independence. Commonwealth and statehood options have polled nearly evenly in recent years, while independence lags, with support in the single digits. Commonwealth advocates say that two-stage voting is unfair because it pits them against the other options combined.

"Each political status must be considered on the same footing. And the clear choice of the people should win," Acevedo Vila said. "That is the true definition of democracy."

Puerto Rico's nonvoting member of Congress, Republican Luis Fortuno, said the current "destructive" situation had failed the people and led to 3,000 each month leaving the island.

Jeannette Rivera-Lyles of the Sentinel staff contributed to this report. Tamara Lytle can be reached at [redacted]

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Texas
Switch causes voting 'kinks'

The Bryan-College Station Eagle
Eagle Staff Writer
By APRIL AVISON
April 25, 2007

Residents are encouraged to bring voter registration cards when they cast ballots in the upcoming elections, because a glitch in the new statewide system may cause delays, election officials said.

In the process of recently converting to a statewide registration system, the addresses of about 2,000 voters within Brazos County were deemed invalid because they didn't match Department of Public Safety Records, said Kristy Roe, chief deputy at the Brazos County Tax Office.

More than 80,000 people are registered to vote in Brazos County.

State officials are in the process of correcting the errors, but it's possible that some people could show up at the polls and have to go through a lengthy process before they can vote. That's why voters are being asked to try to find their registration cards now, Roe said.

"No one is going to be turned away," she said. "It's just going to take longer. Having your voter registration card is very helpful because it tells that poll worker that you're a valid voter whether your name shows up on the rolls or not."

Early voting begins Monday, and the election is scheduled for May 12.

The recent passage of the Help America Vote Act requires that the state, rather than counties, handle voter registration.

"It requires that we pull our list from state software," Roe said. "I think the software itself has fantastic potential. It's just that the rollout was statewide in one day. It took some active voters and said their addresses weren't valid, and it put those people in limbo."

Scott Haywood, director of communications for Secretary of State Roger Williams, confirmed that some problems are being worked out with the system's vendors, IBM and Hart Intercivic.

"This is the first time we've used this system, and we're experiencing some kinks, but we're hoping to address those as quickly as we can," he said. "We're working on the system itself, and on some backup solutions, so elections will be minimally impacted."

If a voter's name isn't on the rolls and they don't have a registration card, they have to be verified by the state voter registration office, a process that could take at least 20 minutes, Bryan City Secretary Mary Lynne Stratta said.

"It could be that nobody who votes in this election is going to be one of those 2,000, but I want everybody to know about this," Stratta said.

Election officials stressed that no one should be discouraged from voting just because they can't find their registration card. They should, however, bring some form of ID such as a driver's license, Social Security card or utility bill.

"What we really want to do is inform the voters that we've had to go to this statewide system," Stratta said. "We know there could be problems, and we want our voters to be prepared."

Haywood said there's no way to tell how long it will take to verify a name on election day.

"It will depend on the volume of calls," he said. "Voters always have the option of voting provisionally. If it's determined later that they're a registered voter, their vote will count."

In the upcoming election, Bryan voters will choose a mayor, and residents of Single Member Districts 2 and 4 will choose a council member. College Station's council members represent the community at large, and voters will decide a mayor and council members for places 1 and 2. A $67.42 million school bond issue election also is on the ballot for College Station voters.

A proposed constitutional amendment will appear on ballots statewide. If approved, it would authorize the Texas Legislature to adjust the school property tax rate for senior citizens and disabled residents.

April Avison's e-mail address [redacted]

##########

Vermont
Senate OKs instant runoff voting

Burlington Free Press
Published: Thursday, April 26, 2007
By Terri Hallenbeck
Free Press Staff Writer

MONTPELIER -- By a slim margin Wednesday, the Senate gave preliminary approval to a bill that would have Vermonters deciding congressional elections by instant runoff voting, the method Burlington used in last year's mayoral vote.

Supporters of the method hailed the 15-13 vote. "This definitely gives it a big boost," said Paul Burns, executive director of the Vermont Public Interest Research Group. "Despite the closeness of the vote, this is a giant step."

Opponents criticized instant runoff voting as confusing, expensive and unnecessary. "It's a problem that doesn't exist that's going to cost us money to fix, and there's not a lot of support around the state," said Sen. George Coppenrath, R-Caledonia.

The legislation calls for using instant runoff voting starting in 2008 with the state's lone U.S. House seat. Voters would rank the candidates in order of preference. If no candidate won more than 50 percent of the first-place votes, voters' second choice would be factored in. The idea is to ensure that whoever wins has the backing of a majority of voters.

"This is not a newfangled idea," Senate Government Operations Committee Chairwoman Jeanette White, D-Windham, told the Senate in making a pitch for the legislation. Along with Burlington, the system is used in places such as Australia, Ireland and San Francisco, she said.

Vermont would, however, be the first state in the nation to use the method if the legislation is enacted. The likelihood of that is uncertain.

Senators are due to vote on the bill again today before sending it to the House. The legislation might reach the House floor before adjournment next month, but time is short, said House Speaker Gaye Symington, D-Jericho, who was clearly irritated with the Senate for passing the legislation so late in the session.

Gov. Jim Douglas opposes the legislation. While Douglas generally refuses to declare whether he will veto legislation before it goes through the Legislature, spokesman Jason Gibbs said, "He really does not like it. He believes fundamentally in one person, one vote."

For Sen. Hinda Miller, D-Chittenden, Wednesday's vote was personal. She lost last year's Burlington mayoral race in which instant runoff voting was used for the first time in Vermont. "I don't think it really gives an honest evaluation of who people choose first," she said. "This is a game of chance," Miller said.

During the campaign, she said, she and her supporters spent a lot of time strategizing about how instant runoff voting would affect the race. "It becomes a significant part of the campaign -- who should you vote for second? It got very confusing for all of us."

White argued that exit polling done at the Burlington election indicated voters were not confused by the process, and that 63 percent of them liked instant runoff voting.

Contact Terri Hallenbeck at 229-4126 or thallenb@bfp.burlingtonfreepress.com.

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Bryan Whitener/EAC/GOV
04/27/2007 10:48 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (4-27-07, Frid)

Commissioners:

The following items are in the news.

##########

National

- Tova Wang Issues Press Release: Calls for EAC to End Censorship (Comm. Hillman quoted)
- Vice-Chair Rodriguez Statement Regarding Tova Wang's Request
- Writer/Researcher of EAC 'Voter Fraud' Study Says She Has Been Gag-Ordered by the Federal Commission (Comm. Hillman quoted)
- "As Shallow as a Dry Brook": Buster Soaries on the Federal Commitment to Election Reform (Soaries discusses EAC from its beginning to his departure)
- Will Voting Reforms Discourage Minority Voting? (EAC, voter fraud, Tova Wang)
- The voter fraud scam (Roanoke Times editorial; EAC mentioned)
- Dianne Feinstein: Ensuring every vote counts in elections
- Voter Fraud and the EAC (Dan Tokaji)
- HAVA Amendment Buried in Iraq Bill? (changes 102 funds deadline Pages 12 and 186)
- Author of 'Armed Madhouse' cites concerns for 2008 race (cites EAC stats on votes not counted)
- White House held GOP prospect briefings (Hatch Act, GSA and other agencies)
- It's Time To Outlaw Paperless Electronic Voting in the U.S. (EAC mentioned)

Texas

- Homer says no to voter ID bill (EAC mentioned)

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* Also included below is the weekly summary of election reform news and opinion that appears in electionline.org today.

##########

National
Tova Wang Issues Press Release: Calls for EAC to End Censorship (Comm. Hillman quoted)

Tova Andrea Wang, Co-Author of the Voter Fraud and Voter Intimidation Report for the Election Assistance Commission, Calls for an End to the Censorship

Press Release
Contact James Joseph
Arnold & Porter
(202) 942-5355
[redacted]

Over the last few weeks, there has been a developing controversy in the press and in the Congress over a report on voter fraud and voter intimidation I co-authored for the Election Assistance Commission ("EAC"). It has been my desire to participate in this discussion and share my experience as a researcher, expert and co-author of the report. Unfortunately, the EAC has barred me from speaking. Early last week, through my attorney, I sent a letter to the Commission requesting that they release me from this gag order. Despite repeated follow-up, the EAC has failed to respond to this simple request. In the meantime, not only can I not speak to the press or public -- it is unclear under the terms of my contract with the EAC whether I can even answer questions from members of Congress.

My co-author and I submitted our report in July 2006; the EAC finally released its version of the report in December 2006. As numerous press reports indicate, the conclusions that we found in our research and included in our report were revised by the EAC, without explanation or discussion with me, my co-author or the general public. From the beginning of the project to this moment, my co-author and I have been bound in our contracts with the EAC to silence regarding our work, subject to law suits and civil liability if we violate the EAC-imposed gag order. Moreover, from July to December, no member of the EAC Commission or staff contacted me or my co-author to raise any concerns about the substance of our research. Indeed, after I learned that the EAC was revising our report before its public release, I contacted the EAC, and they refused to discuss with me the revisions, or the reasons such revisions were necessary.

Stifling discussion and debate over this report and the critical issues it addresses is contrary to the mission and goals of the EAC and to the goal of ensuring honest and fair elections in this country. Commissioner Hillman stated in her defense of the EAC's actions that the EAC seeks to "ensure improvements in the administration of federal elections so that all eligible voters will be able to vote and have that vote recorded and counted accurately." I share this aspiration. But I believe that the best way to achieve that end is not by suppressing or stifling debate and discussion, but by engaging in a thoughtful process of research and dialogue that ultimately arrives at the truth about the problems our voting system currently confronts.

##########

National
Vice-Chair Rodriguez Statement Regarding Tova Wang's Request

Statement of Vice-Chair Rosemary E. Rodriguez Regarding Request by Tova Wang, Co-Author of the Draft Voter Fraud and Voter Intimidation Report for the Election Assistance Commission April 26, 2007

On April 16, 2007, Ms. Tova Wang, formerly a contract employee of the United States Election Assistance Commission (EAC), made the following request of the EAC: "to discuss with third parties any and all aspects of her work for the EAC and to release her research and other information relating to her work for the EAC and the draft report that she submitted to the EAC."

Today, Ms. Wang issued a public statement restating her request to the EAC, pointing out that we have not yet responded to her April 16 request. As a member of the EAC, I am compelled to comment on her request. I cannot bind the Commission, as one member, but I believe that the EAC should immediately respond to Ms. Wang's request. I further believe that releasing Ms. Wang to discuss her work for the EAC will be a positive step as we endeavor to operate with more transparency.

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National
Writer/Researcher of EAC 'Voter Fraud' Study Says She Has Been Gag-Ordered by the Federal Commission (Comm. Hillman quoted)

Tova Andrea Wang, Co-Author of Bi-Partisan 'Voter Fraud and Voter Intimidation Report' for the Election Assistance Commission, Calls for an End to the Censorship in Wake of EAC's Altering of Her

Report...

Brad Friedman
Brad Blog
April 26, 2007

[1]In a just released statement [PDF] [2], Tova Andrea Wang, a Democracy Fellow at the Century Foundation --- co-author of a report that the U.S. Election Assistance Commission (EAC) attempted to bury --- has announced that the federal commission of Presidential-appointees has refused to allow her to speak directly about her report and the action taken by the EAC to alter its findings and hide her original report from public view.

Despite the controversy surrounding the bi-partisan report and Wang's desire to participate in the discussion as the report's co-author, the EAC --- at the heart of several controversies of late and increasing Congressional scrutiny [3] --- has barred her from speaking about it.

"It has been my desire to participate in this discussion and share my experience as a researcher, expert and co-author of the report," Wang says in her statement. "Unfortunately, the EAC has barred me from speaking."

Her official legal requests have been ignored by the commission.

"Early last week, through my attorney, I sent a letter to the Commission requesting that they release me from this gag order. Despite repeated follow-up, the EAC has failed to respond to this simple request. In the meantime, not only can I not speak to the press or public --- it is unclear under the terms of my contract with the EAC whether I can even answer questions from members of Congress"

"As numerous press reports indicate, the conclusions that we found in our research and included in our report were revised by the EAC, without explanation or discussion with me, my co-author or the general public," Wang continues...

"From the beginning of the project to this moment, my co-author and I have been bound in our contracts with the EAC to silence regarding our work, subject to law suits and civil liability if we violate the EAC-imposed gag order."

Moreover, she goes on to add that from the time of the reports submission in July of 2006, until the EAC released its altered final version in December of 2006, she was never contacted by the EAC with concerns about the study. When reports surfaced that the EAC was revising the report before public release, she contacted the EAC, but according to her statement, "they refused to discuss with me the revisions, or the reasons such revisions were necessary."

Wang goes on to quote EAC commissioner Gracia Hillman's recent claims that the EAC seeks to "ensure improvements in the administration of federal elections so that all eligible voters will be able to vote and have that vote recorded and counted accurately."

In reply, Wang writes: "I share this aspiration. But I believe that the best way to achieve that end is not by suppressing or stifling debate and discussion, but by engaging in a thoughtful process of research and dialogue that ultimately arrives at the truth about the problems our voting system currently confronts."

BRAD BLOG [4] readers will recall that Wang Guest Blogged here [5] on the dubious subject of GOP "voter fraud" allegations but did not directly discuss the EAC report in that article.

We have invited her on several occassions to comment on the EAC's action, but she has declined in light of the contractual restrictions.

We have covered the issue of the gamed study, altered before release in order to whitewash the failure to find more than a handful of legitimate "voter fraud" issues, despite storied GOP claims of a massive epidemic, here [6] and here [7].

-- Wang's original draft report on "Voter Fraud and Voter Intimidation" is posted here [PDF] [8]
-- The EAC's altered report, retitled "Election Crimes: An Initial Review and Recommendations for Future Study" is posted here [PDF] [9]

At the time of the original report's release, the commission was chaired by Paul DeGregorio, a St. Louis colleague of high-level Republican operative Mark F. "Thor" Hearne who was involved in the study. Hearne's "non-partisan" group, "American Center for Voting Rights" (ACVR) [10] has been pushing claims of "voter fraud" for years in order to help enact restrictive and disenfranchising Voter ID laws meant to keep Democratic-leaning voters from the polls.

The BRAD BLOG [11] will have more on Hearne and the EAC's "voter fraud" report later today...

[12]For more information on the "non-partisan" tax-exempt ACVR "Voter Fraud" scam and the snakeoil salesmen who invented it, Bush/Cheney '04 National General Counsel Mark F. "Thor" Hearne and RNC Communications Director Jim Dyke, please see BRAD BLOG's full Special Coverage of the "American Center for Voting Rights" at http://www.BradBlog.com/ACVR [13].

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[9] posted here [PDF]:
http://www.BradBlog.com/docs/EAC_VoterFraudIntimidationReport_POSTED_120706.pdf
[10] "American Center for Voting Rights" (ACVR): http://www.BradBlog.com/ACVR
[11] The BRAD BLOG: http://www.BradBlog.com
[12] Image: http://www.BradBlog.com/ACVR.htm
[13] http://www.BradBlog.com/ACVR: http://www.BradBlog.com/ACVR

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National
"As Shallow as a Dry Brook": Buster Soaries on the Federal Commitment to Election Reform (Soaries discusses EAC from its beginning to his departure)

OpEdNews
By MegECox
April 26, 2007

“It was the worst experience of my life,” DeForest “Buster” Soaries said of his 16 months as the first head of the U.S. Election Assistance Commission.

Soaries is a faith-based community development pioneer, former New Jersey secretary of state, and currently senior pastor of First Baptist Church of Lincoln Gardens in Somerset, N. J. In early 2003, he received a call from the White House: President Bush wanted him to serve on a new commission that was established by the 2002 Help America Vote Act to assist with federal elections and establish minimum election administration standards. Soaries agreed to serve.

The Long Road to Confirmation

The confirmation process took a lot longer than Soaries had anticipated. HAVA called for the four EAC commissioners to be appointed by February 26, 2003, but background checks on the nominees were not completed until June of that year. Confirmation was expected by September, so Soaries made arrangements to move to Washington and enroll his twin sons in their first year of high school there. "Although it was late," Soaries said in a January 2007 interview, "I did not perceive that it was too late." He expected that they would have "14 months of solid work" before the 2004 presidential election.

By August it had become clear that the appointment was "more tentative than firm," Soaries said, so he decided to enroll his boys in high school back home and planned to commute to Washington. Other commissioners had to make similar adjustments, Soaries recalled. One closed down his law practice; another stopped accepting clients for her contracting firm. Because of the delays and uncertainty, "by that time I was prepared to withdraw," Soaries said. "But if I had, the EAC wouldn't have been able to get started in time to do anything in '04, and anything bad in the election would have been blamed on this guy from New Jersey who pulled out."

The delays were costly. Not only would Soaries have to maintain two households on one salary ("I couldn' t receive my church salary anymore because of federal ethics rules, even though I was still preaching," he said), the commission would have only 10 months to prepare for the presidential election. The commissioners were finally confirmed on December 13 and decided to begin their work immediately after the holidays, in January 2004.

The Help America Vote Act, which had created the EAC, had taken a long time to get off the ground, too: It didn't pass until two years after the 2000 presidential election. Soaries explained that, on the one hand, he wasn't cynical about Congress taking so long to pass HAVA because 9/11 had happened in the interim. On the other hand, he wondered why it hadn't passed much earlier. "If Washington really believed Florida 2000 was a national disgrace," he said, "it would have passed HAVA before 9/11. It's not rocket science." And if the Bush administration had had any "sense of urgency," he argued, it would have "started identifying candidates for the EAC while HAVA was still being discussed."

The EAC Begins Its Work

Some unpleasant surprises awaited the newly confirmed EAC commissioners when they arrived in Washington. "Number one," Soaries recounted, "we have no office. So when we report to Washington we agree to meet at a hotel. There's no place designated for us to report. There was no 'they' to give us office space. Congress and the White House confirmed us and appointed us and then moved back to Iraq. We have no telephone, no telephone number, no place to report. The White House could have made preparations. We were confirmed December 13, and that was it."

Not only was the EAC without office space, it was badly underfunded, with only $1.2 million dollars with which to secure and furnish office space, pay the commissioners and staff, and carry out the mission HAVA had laid out for it.

HAVA had transferred the Federal Election Commission's Office of Election Administration to the EAC, Soaries explained, so the commissioners arranged to use FEC office space to facilitate the transfer. The EAC didn't get its own office space until April 2004.

The commission settled in to begin work on its assigned tasks. It was to distribute money to the states for the purchase of new voting equipment–by this time many had purchased equipment and were awaiting reimbursement–and it was to research voting systems and establish technology standards for them. The commission has minimal regulatory authority, but Soaries didn't see that as a problem: "I felt the lack of regulatory authority would not impair our work because if we had $10 million for research, we could say this technology is standard for voting equipment, and no one would be caught dead choosing anything below that standard."

The trouble was that although HAVA had authorized millions of dollars for research on voting equipment, Congress didn't appropriate a penny for that purpose during Soaries's tenure. With neither research nor regulatory authority, he said, "all you have is a soapbox."

Another surprise for the commissioners was that states were receiving hundreds of millions of dollars to buy voting equipment according to the HAVA-mandated schedule but were being given virtually no guidance regarding how to spend it. When Congress became aware of the trouble, Soaries said, it asked the EAC to recommend solutions. So the commissioners prepared a budget outlining what the commission would need in terms of money and timing. "But the Office of Management and Budget stopped us from giving the document to Congress," he recalled. "'You don't have bypass authority.' they said."

Some independent commissions must have everything approved by OMB, Soaries explained. "Everything must pass through the White House," he said. "They didn't tell us this until April." At the time, a multibillion-dollar Iraq War appropriation was making its way through Congress, and the commissioners "wanted to tack on $2 million to give us enough money to prepare for the November elections, and OMB wouldn't allow the request to go in," Soaries said.

The first round of HAVA funding had gone to the states before the commissioners arrived in Washington. "The federal government just wrote the checks," Soaries said, and many states used the money for voting equipment. The funding in the next round was much more substantial, but before it could be released, the commission had to make sure that each state had submitted a plan that included all of the elements required by HAVA.

According to Soaries, this was not a qualitative analysis because the EAC did not have the authority to do qualitative analysis on state plans. That lack of authority was a result of the political process that produced HAVA. "In every chapter of HAVA there's a compromise that makes no sense," Soaries commented, "that you look at and say, 'Boy, this is weird.'"

After the EAC verified that the plans had the needed components, the commission was required to publish them in the Federal Register for 45 days, at a cost to the cash-strapped commission of about $700,000. "What was so offensive is that the Federal Register is a publication owned by Congress," Soaries said. "So watch this. Congress passes a law that requires publication in a publication that Congress owns, but passes a budget that does not provide money to do what Congress mandates. This is criminal! If Congress owns the Federal Register and we're down the hall from the Federal Register, everyone wants to believe that this is all an oversight. So we went to Congress and said, 'You should waive the fee,' and they wouldn't do it."

The commission finally published the plans after spending several weeks coming up with the money to do so, and the funds were released to the states in July 2004. "Many of these states were waiting for money to prepare for November '04," Soaries said, "and Congress knew that."

Although the states' acquisition of new voting machines was the most pressing issue the EAC dealt with in its first year, Soaries emphasized that machines are not the whole story. "If the subject is the right to vote in a democracy, then machines and accessibility and information are all important," he said. "If every machine works flawlessly but people don't know where to go to vote, we have a problem. The EAC in history is the only commitment the federal government ever made to do anything about [improving election administration], and that commitment is as shallow as a dry brook."

Soaries stuck it out through the November election, then resigned from the EAC in April 2005. House Democratic Whip Steny Hoyer issued a statement on the occasion of the resignation, challenging the Bush administration and Congress to "seriously consider Mr. Soaries' observations as we develop the Fiscal Year 2006 budget."

"Who Promotes Democracy?"

Soaries made it clear that neither party was supporting election reform during his tenure at the EAC. "There was no resounding protest from the Democrats to any of this," he pointed out. "There was silence and complicity. Why? At its core it's because members of Congress in their heart of hearts believe that, with all of the flaws and problems and mishaps, the system cannot be too bad because it produced them. American democracy has been swallowed up by American politics."

The electoral process is increasingly dominated by political consultants, Soaries said. "Their job is not to promote democracy but to promote the candidate, by producing your base supporters in larger numbers than your opponent. The strategy of choice has two objectives: I want my people to vote and I want yours not to. Politics by definition requires a form of voter suppression."

If politics is all about bringing out your own base while suppressing your opponent's, Soaries asked, "Who promotes democracy?"

The EAC Since Soaries

Since Soaries left the EAC, Congress has released the funds necessary for it to fulfill its mandate under HAVA. The commission has also become much more partisan, many voting rights activists charge. Steve Carbó, senior program director in the democracy program at Demos, a national public-policy organization, said in a February 2007 interview that Soaries "wasn't willing to play the political games that go on in Washington. He never assumed a traditionally partisan role in his work on the commission."

Rolling Stone magazine asked Soaries whether there were any attempts to politicize the EAC during his tenure. Early on there was an attempt, Soaries answered, but "the one time I got a call from the White House trying to invade this space, I pushed back, and they never called again." People at the White House apparently thought that "because I was a Republican . . . I cared more than I did about Republican politics," he told Rolling Stone.

HAVA authorized the EAC only through 2005. Since then, Carbó said, the commission's longevity has been an "open question." A provision in an election reform bill now in Congress (H.R. 811, called the Holt Bill) would extend the commission's authorization, and the Carter-Baker Commission on election reform recommends greater rulemaking authority for the EAC. These developments worry some voting rights activists.

"If you had asked me two years ago whether giving the EAC rulemaking authority is a good idea, I would have said yes without reservation," Carbó said. But now he worries that the commission will use its authority to further partisan or political ends and feels that the EAC can serve the voters only if both the president and Congress are willing to put aside political interests in the appointment of commissioners and in appropriations for its operation.

Problems in election administration didn't begin with the hanging-chads debacle; rather, Florida 2000 opened a window on an already broken electoral system and opened the door to initiatives that threaten to harm it even more. EAC oversight, electronic voting machines, stricter voter ID rules, consolidation of statewide voter lists–all are outcomes of HAVA that may have been proposed with good intentions but that can make way for less transparency in elections and for disfranchisement of eligible voters. "Elections should be fair and consistent," Ingrid Reed, director of the New Jersey Project for the Eagleton Institute of Politics, said in a February 2007 interview. "We should know what the rules are, and we should be sure election administrators are following them. That's what Buster was concerned about and is concerned about. This system is not one he feels is reliable."

This article originally appeared in the ePistle, the online newsletter of Evangelicals for Social Action. Reprinted by permission of the publisher.

Authors Bio: Meg E. Cox is a freelance writer, editor, and book indexer in Chicago. She writes a monthly newspaper column on voting rights and electoral administration, and her feature articles have appeared in several national magazines.

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National
Will Voting Reforms Discourage Minority Voting? (EAC, voter fraud, Tova Wang)

Gotham Gazette
by Doug Israel and Andrea Senteno
April, 2007

The recent decision to move New York's presidential primary to February 5 -- which is now being "Super Duper Tuesday" -- is not only expected to give New Yorkers more influence in choosing in the Democratic and Republican nominees, it could also boost voter turnout and increase the power of urban and minority voters.

According to recent report by The Century Foundation early primaries in states like California, Nevada, New Jersey and New York mean that Latino voters in particular, "could not only affect the outcomes, but also the topics the candidates focus on, including wage and labor issues, education and immigration reform."

At the same time, though, because of the debacle in Florida in 2000, new voter identification requirements are being implemented that may have the opposite effect, discouraging minority groups from going to the polls.

Voter identification requirements have become a critical part of the national debate over election reform. Supporters of more stringent regulations argue that voter fraud is frequent enough to justify strict new identification requirements. Others disagree, arguing that the consequences far outweigh the benefits.

"At a time when not nearly enough people vote in the United States, some political players are making it more difficult for people to vote," said Tova Wang, a fellow at the Century Foundation and a co-author of a report on voter fraud now at the center of a brewing controversy. According to Wang, the federal Election Assistance Commission rewrote the report's findings before its final release and issued a gag order to keep Wang from speaking about the report.

VOTER IDENTIFICATION REQUIREMENTS

The 2002 Help America Vote Act (known as HAVA) tried to address voter identification issues by calling for updated voting systems and technology across the country.

HAVA requires that first-time voters present a state driver's license or the last four digits of their Social Security number at the time of registration. Voters with neither form of identification may use a valid photo ID, a current utility bill, bank statements, government check or any other government document that shows the registrant's name and address. Voters who do not supply this information at the time of registration will be asked for it at polls when they go to vote for the first time.

Although HAVA is a federal program, each state must come up with its own ways of complying with the regulations. New York State's laws largely mirror those of HAVA and are not considered overly burdensome by many election reform experts.

IS FRAUD A REAL CONCERN?

The main reason for the new voter identification regulations, proponents argue, is voter fraud. And they point to news stories that appear after nearly every election relating instances of impersonation, double voting, and even votes cast on behalf of the dead.

But the prevalence of voter fraud depends on who you ask, with Republicans generally arguing that it is widespread and Democrats typically arguing that it is not.

A lengthy, bi-partisan study (in pdf) on voter fraud conducted by the Election Assistance Commission concluded only that the issue has "created a great deal of debate among academics, election officials, and voters" and noted that "past studies of these issues have been limited in scope and some have been riddled with bias."

But that mild conclusion proved to be controversial. The New York Times reported that the editors of the report intentionally revised the findings of the primary authors to reflect the sentiments of White House officials (to view original draft report, in pdf, go here). In a statement released April 26, (statement [PDF]), Wang stated "It has been my desire to participate in this discussion and share my experience as a researcher, expert and co-author of the report. ...Unfortunately, the EAC has barred me from speaking." Wang continues, "As numerous press reports indicate, the conclusions that we found in our research and included in our report were revised by the EAC, without explanation or discussion with me, my co-author or the general public. ...From the beginning of the project to this moment, my co-author and I have been bound in our contracts with the EAC to silence regarding our work, subject to law suits and civil liability if we violate the EAC-imposed gag order."

There has been little prosecution of fraudulent voting. Since 2000, the Justice Department has charged only 120 people of fraudulent voting. Eighty-six were convicted. This low level of prosecution been cited by some as a possible explanation for the firing of eight U.S. attorneys by Attorney General Alberto Gonzales.

WILL NEW REQUIREMENTS DETER VOTERS?

Advocates for minority communities argue that even minimal identification requirements can disenfranchise eligible voters, because people of color and immigrants are more often subjected to requests for identification, either properly or improperly.

According to the Asian American Legal Defense Fund overzealous poll workers have been improperly implementing identification requirements at voting places in recent elections, and minority voters and voters with limited English are the groups most often asked for identification when it is not actually required.

Research also suggests that Latinos, African Americans, and Asian Americans are less likely to vote when required to show identification than when they simply have to state their names.

In the February Special Election in Nassau County to fill a vacant State Senate seat, voting rights groups became alarmed that there might be widespread voter intimidation at the polls because of comments by Joseph Mondello, the Republican Party Chairman for New York State and Nassau County. "Our poll watchers and election inspectors will challenge people to show some kind of identification as to who they are," Mondello reportedly said. "They have a right to ask for identification to make sure you are John Smith. Our people have been cavalier about this in the past. This time, in this election, we're dearly concerned."

THE NEED FOR VOTER EDUCATION

To avoid confusion at the polls and the disenfranchisement of voters, election reform advocates have argued for years that New York City, with such a large and diverse population, has to be sensitive to a wide array of voter needs that other localities might not need to consider.

City residents, for example, are less likely to drive or own a car than their suburban and rural counterparts, and therefore are less likely to hold a driver's license.

The personal and cultural experiences of many of New York City's immigrants, some argue, should be taken into consideration. For instance, a significant portion of New York's immigrants come from oppressive regimes where identification cards were used by authorities as a form of intimidation.

Members of these communities may be less likely to carry identification, or to provide it on demand, especially if it is not legally required.

Unfortunately many voters are unaware of their rights. And so some voters who are asked to show identification may simply decide to leave the polling station and not return. While New York may not have the strict identification requirements that other states have, some experts fear that the misuse of HAVA identification requirements, especially when it results in the disenfranchisement of a voter, could damage long and short term voter participation among minority and non-English speaking voters.

The New York City Board of Elections has been urged to increase poll worker training and voter education, to ensure that poll workers and voters are aware of the HAVA requirements and their rights. With the eventual introduction of new voting machines and processes, poll workers will be asked to perform more services for voters and voters will be less familiar with the process.

In the coming years, overall and training and education will become more important for the Boards of Elections. Election reform advocates, civic groups and community organizations will be asked to play a significant role in educating voters as well.

Doug Israel is director of public policy and advocacy for Citizens Union Foundation, which publishes Gotham Gazette. Andrea Senteno is program associate.

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National
The voter fraud scam (Roanoke Times editorial; EAC mentioned)

Roanoke Times
Editorial
April 27, 2007

Where Republican operatives see conspiracies to rig elections, researchers do not.

The Bush Justice Department has something of an obsession with voter fraud. At least two of the federal prosecutors it booted out of office last year had not pursued such cases vigorously enough to satisfy Republican politicians or party officials.

The bigger fraud, though, is an Election Assistance Commission report last year indicating GOP assumptions about pervasive voter fraud are debatable when, in fact, researchers found little evidence of it across the country.

Last April, White House political operative Karl Rove went so far as to assert in a speech to Republican lawyers: "We're, in some parts of the country, I'm afraid to say, beginning to look like we have elections like those run in countries where the guys in charge are colonels in mirrored sunglasses."

Yet, The New York Times reports, a five-year, nationwide crackdown on this alleged danger to the republic netted only about 120 charges and 86 convictions as of last year.

Rather than broad conspiracies to subvert the will of the people, the research found mainly individual violations of election laws that previous Justice Departments would not have prosecuted. Often, the violations were the result of mistakes.

The newspaper cites the example of a onetime jewelry store owner in Tallahassee, Fla., a Pakistani living legally in the U.S. for more than 10 years, who filled out a voter registration form at the behest of a clerk at the division of motor vehicles. He didn't know he had to be a U.S. citizen.

Now he and his wife and daughter, both U.S. citizens, are living in Lahore, Pakistan.

In a few states, The Times reported, U.S. attorney's offices "did turn up instances of fraudulent voting in mostly rural areas. They were in the hard-to-extinguish tradition of vote buying, where local politicians offered $5 to $100 for individuals' support."

Or beer, or cigarettes, or pork rinds, the price for votes three years ago in Appalachia's town elections in far Southwest Virginia.

Rove should be relieved that the conspirators were convicted. None, as far as we know, wore mirrored sunglasses.

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National

Dianne Feinstein: Ensuring every vote counts in elections

By Dianne Feinstein
Sacramento Bee
Special To The Bee
Published 12:00 am PDT Sunday, April 22, 2007

The 2006 vote count in Sarasota County, Fla., exposed major weaknesses in our nation's voting system. Nearly 240,000 voters cast ballots on Nov. 7. But when their votes were tallied, things didn't square up: There were 18,000 fewer votes in the 13th Congressional District than were recorded in other contests on the same ballot.

So-called undervotes occur in every election. But the rate of undervotes on Sarasota County's touch-screen machines was five times the rate seen on absentee ballots in the same contest.

Clearly, something went wrong. Was it a software glitch? Did poor ballot design lead voters mistakenly to overlook the congressional race? Was there tampering? We don't know. After an investigation, Florida election officials say software was not to blame. But other experts say machine failure cannot be ruled out.

In the end, Republican Vern Buchanan was declared the winner over Democrat Christine Jennings, by only 369 votes. Thousands of votes were never recorded. And since the machines were not equipped to provide a paper trail that could be verified by the voters, we may never know what the true count was.

This sort of uncertainty is unacceptable. That's why I am introducing legislation to reform our nation's voting systems. The Ballot Integrity Act would:

- Require that all voting systems used in federal elections have a voter-verified paper trail, and ban the purchase of new voting systems that do not provide a paper trail.

- Establish a $600 million grant program to help states purchase voting systems equipped to produce a voter-verified paper trail.

- Create a $3 million competitive grant program to develop a voting system with a voter-verified paper trail, with full accessibility for the disabled.

- Require random public audits of electronic voting tallies, and open voting system software to inspection by independent computer analysts.

- Require that all voting places offer emergency paper ballots in case of system failures or delays.

These changes are critical to ensuring that every vote counts. To leave things as they stand today is to invite trouble.

The danger is real. In last year's midterm elections, one-third of voters -- 55 million Americans -- cast ballots on electronic voting systems. Some jurisdictions have machines that leave a voter-verified paper trail; others do not.

In Sarasota County's 13th Congressional District, recounts were conducted, but they were essentially pointless. That's because the recount there simply entailed tallying the same electronic record again. And so the same flawed result was produced, with no way to find out why 18,000 votes went missing.

Inaccurate election tallies are an urgent problem, but so far they have not been addressed adequately. It has been more than four years since the Help America Vote Act, to reform federal elections, was passed by Congress and signed into law. But experts have identified several serious issues:

- The nonpartisan Election Reform Information Project found that new electronic voting machines may lack necessary security safeguards, and that statewide voter registration databases may not be accurate.

- In two studies in 2006, the Brennan Center for Justice, at the New York University School of Law, found more than 120 security threats to voting machines. The Brennan Center also found a notable lack of scientific study of voting system cost, security and accessibility -- especially for disabled voters.

The problems in Sarasota County are a warning that must be heeded. If similar problems had occurred in the last election in Montana or Virginia -- states with tight U.S. Senate contests -- control of the Congress might have been unclear.

The good news is that some states are beginning to act. Florida Gov. Charlie Crist has announced plans to replace touch-screen voting systems with paper ballots counted by scanning machines. Other states are considering similar plans.

These are moves in the right direction. But they are not enough. We must have uniform national voting standards.

The stakes are high. Inaccurate vote counts erode voter confidence. And if voters lose faith, they may give up on voting altogether.

Voting is fundamental to our democracy and is guaranteed by the Constitution. But the right to vote is diminished if we don't count the vote accurately. It is imperative that Congress ensures that voter choices are recorded accurately, free from error or mischief.

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National
Voter Fraud and the EAC (Dan Tokaji)

Dan Tokaji
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Equal Vote Blog
April 26, 2007
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The last few weeks have seen some very important developments in the ongoing debate over voter fraud. Just today, there's news that exacerbates concern about the role of the federal government in suppressing important information on this debate.

The most recent flurry of attention began with *New York Times* stories earlier this month, available here and here. The first story concerned actions of the Election Assistance Commission (EAC), which significantly "revised" a report on voter fraud and intimidation prepared by two election experts, one from either side of the political spectrum (more on this below). The original expert report found widespread but not unanimous agreement that there's little voting fraud; the EAC's revised version made it appear that there's greater doubt over the prevalence of fraud.* The second report concerned the meager results of the Bush Justice Department's crackdown on voter fraud in the past few years, something that suggests that claims of voter fraud made by Karl Rove and others (see this video) are considerably overblown. McClatchy News had this report last week, which thoroughly examines the Justice Department's voter fraud initiatives, and its connection to the debate over voter ID.

The most recent news is this statement from Tova Wang of The Century Foundation, one of the co-authors of the EAC-commissioned report on voter fraud. Ms. Wang's statement calls for "an end to the censorship" by the EAC. It's worth quoting in full:

> Over the last few weeks, there has been a developing controversy in the press and in the Congress over a report on voter fraud and voter intimidation I co-authored for the Election Assistance Commission ("EAC"). It has been my desire to participate in this discussion and share my experience as a researcher, expert and co-author of the report. Unfortunately, the EAC has barred me from speaking. Early last week, through my attorney, I sent a letter to the Commission requesting that they release me from this gag order. Despite repeated follow-up, the EAC has failed to respond to this simple request. In the meantime, not only can I not speak to the press or public -- it is unclear under the terms of my contract with the EAC whether I can even answer questions from members of Congress.
>
> My co-author and I submitted our report in July 2006; the EAC finally released its version of the report in December 2006. As numerous press reports indicate, the conclusions that we found in our research and included in our report were revised by the EAC, without explanation or discussion with me, my co-author or the general public. From the beginning of the project to this moment, my co-author and I have been bound in our contracts with the EAC to silence regarding our work, subject to law suits and civil liability if we violate the EAC-imposed gag order. Moreover, from July to December, no member of the EAC Commission or staff contacted me or my co-author to raise any concerns about the substance of our research. Indeed, after I learned that the EAC was revising our report before its public release, I contacted the EAC, and they refused to discuss with me the revisions, or the reasons such revisions were necessary.
>
> Stifling discussion and debate over this report and the critical issues it addresses is contrary to the mission and goals of the EAC and to the goal of ensuring honest and fair elections in this country. Commissioner Hillman stated in her defense of the EAC's actions that the EAC seeks to "ensure improvements in the administration of federal elections so that all eligible voters will be able to vote and have that vote recorded and counted accurately." I share this aspiration. But I believe that the best way to achieve that end is not by suppressing or stifling debate and discussion, but by engaging in a thoughtful process of research and dialogue that ultimately arrives at the truth about the problems our voting system currently confronts.

Ms. Wang's statement raises profound concerns about the role of the EAC and, more broadly, the federal government when it comes to hot-button issues like voter fraud. The EAC is supposed to serve as a sort of clearinghouse for research on important election administration issues. It is structured as a bipartisan agency, with two Republicans and two Democrats, but requires a majority to take any action -- including, it would seem, the release of research it's commissioned. I've previously expressed concern, here and here , about the EAC's two newest commissioners. My worry was that, instead of working to promote a better-functioning election system, they'd see their role as promoting the interests of their party. The latest developments magnify these concerns.

All of this raises major questions about the role of the federal government when it comes to election administration. I must confess that I started out as someone with high hopes for the EAC, believing that it could serve a useful role in promoting better election administration. And I still believe that some of the things that the EAC has done some good things in its first few years, including its 2004 Election Day Survey and its opinion letter last year on Arizona's registration requirements. The latest developments cannot help but make one wonder, however, whether the EAC as presently structured can serve its intended function adequately.

At the same time, leaving election administration to the states isn't a very palatable option. We've seen serious questions about partisan manipulation of elections by elected secretaries of state in the last two presidential election cycles. State efforts to impose new barriers to participation -- most notably the stringent ID requirements enacted in Georgia, Indiana, Missouri, and Arizona -- also raise serious doubts about whether election administration can be left to the states. As Rick Hasen suggests here, this is an area where the courts should step in to protect voters' rights, though I'm not particularly sanguine about the prospects for salutary intervention by the Supreme Court in this area for reasons explained here.

In sum, the voter fraud debate highlights serious problem of institutional responsibility over election administration. It concerns not only what role the federal, state, and local governments should play in administering elections, but also the proper divisions of authority among branches at each level. It's a tough problem, one that I don't presently have an answer to.

* Disclosure: I was part of a research team, led by the Eagleton Institute of Rutgers University, that prepared separate reports for the EAC on provisional voting and voter ID.

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National
HAVA Amendment Buried in Iraq Bill? (changes 102 funds deadline Pages 12 and 186)

Rick Hasen
Professor of Law Chair
Loyola Law School Los Angeles
Election Law Blog
April 26, 2007

CHAPTER 3
GENERAL PROVISIONS–THIS CHAPTER
SEC. 4301. (a) Section 102(a)(3)(B) of the Help America Vote Act of 2002 (42 U.S.C. 15302(a)(3)(B)) is amended by striking "January 1, 2006" and inserting "March 1, 2008".
(b) The amendment made by subsection (a) shall take effect as if included in the enactment of the Help America Vote Act of 2002.

CHAPTER 3
GENERAL PROVISIONS–THIS CHAPTER
Section 4301. The conference agreement modifies a provision proposed by the House (section 4301) to amend section 102(a)(3)(B) of the Help America Vote Act of 2002 by striking "January 1, 2006" and inserting "March 1, 2008". The Senate bill did not include similar language.

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National

Author of 'Armed Madhouse' cites concerns for 2008 race (cites EAC stats on votes not counted)

Oregon Daily Emerald
By: Joshua Bolkan
Freelance Reporter
Posted: 4/27/07

Wednesday night Greg Palast, author and journalist for the British Broadcasting Corporation, spoke to an enthusiastic crowd of about 300 students and community members in 180 PLC.

Palast, whose most recent book is "Armed Madhouse: From Baghdad to New Orleans - Sordid Secrets and Strange Tales of a White House Gone Wild," focuses primarily on his belief that the 2000 and 2004 presidential elections were corrupt and his concern that the 2008 election will be similarly tainted.

Using numbers from the United States Election Assistance Commission, Palast said that in 2004 more than 150,000 votes were not counted in Ohio, and Republicans challenged more than 3,000,000 nationwide - primarily in districts with high populations of minority voters.

Switching sources to the United States Commission on Civil Rights, he also claimed that black voters had a 900 percent higher chance of having their votes rejected than white voters, while Latino votes were 500 percent more likely to be thrown away.

To make his case that the Bush administration stole the 2004 election, Palast relied heavily on e-mails written by Karl Rove, President Bush's deputy chief of staff.

One of the most damaging e-mails was a list of names that Rove's office claimed were donors to George Bush's 2004 presidential campaign, but the address listed for many people on the list turned out to be a homeless shelter. Palast then took the list to a group of lawyers who specialize in election law and they told him it was a caging list.

Caging is an illegal technique used to suppress opposition votes.

When caging, a political group compiles lists of names of registered voters they think will vote for an opposing candidate. They then send a piece of mail to each of those names requiring a signature. If the mail is not signed, it can be used to challenge that person's registration, possibly invalidating their registration altogether. This effectively steals a person's right to vote without them even knowing until they try to submit their ballot. Palast said this could block the vote of - among others - students studying abroad, people serving overseas in the military, people living in homeless shelters, or people who just don't want to sign for a strange letter.

Palast said that the majority of people on this list were minorities who are several times more likely to have their votes discarded than white Americans.

Palast moved into a brief talk about the role of oil in the Iraq war.

He explained that the real goal was to go into Iraq and "turn off the spigot," saying that if the supply of oil was reduced, the price of gas would go up.

To end his lecture, Palast told the audience that he didn't have many solutions for the problems facing America. He said that all he could do was find the facts and report them, but that the American media are not covering these stories. As a result, he hasn't copyrighted "Armed Madhouse," and he encouraged the audience to disseminate pieces of it any way that they could.

"Take the section on No Child Left Behind," he said, "and send it to every teacher you know."

Audience member and local jazz musician Mary Elizabeth Holby said, "That's amazing. You can put it on your MySpace page or blow it up and paste it to telephone poles."

Graduate student Frederik Kohlert was dismayed by the lack of hands that went up when introductory speaker and radio host Alan Siporin asked how many students were in the audience.

"I think Alan made an interesting point that there were almost no young people," Kohlert said - "that's scandalous. We're on a college campus in what's supposed to be a progressive state."

Freshman Darcy Basque described the lecture as shocking.

"This stuff about all the votes being thrown away because people were overseas really hit home because I have a friend who's about to be sent back (into overseas military service) in September even though she's supposed to be out in August."

The proceeds from the event will be donated to the Common Ground Collective, a nonprofit group that helps victims of Hurricane Katrina.

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National

White House held GOP prospect briefings (Hatch Act, GSA and other agencies)

By DEB RIECHMANN
Associated Press Writer
April 26, 2007

WASHINGTON (AP) -- The White House acknowledged Thursday it has conducted about 20 briefings for federal employees on the election prospects of Republican candidates - the sort of meetings that have led to an investigation into administration political activity.

An independent investigative unit, the U.S. Office of Special Counsel, this week began a probe into a presentation by Bush aide J. Scott Jennings to political appointees at the General Services Administration. At issue is whether the January session violated the federal Hatch Act, which bars federal employees from engaging in political activities with government resources or on government time.

The Office of Special Counsel, led by Scott Bloch, is in charge of enforcing the Hatch Act. At the same time, Bloch himself is being investigated by the Bush administration on separate matters, including his enforcement of the Hatch Act.

White House spokesman Scott Stanzel said briefings were held at other federal agencies besides the GSA, for a total of about 20 - most in 2006 and a couple in 2007. They were conducted by White House political director Sara Taylor or Jennings, her deputy. It had been known that other briefings had been held, but not how many.

Others were held in previous years as well, but Stanzel said the White House hasn't kept a count of how many.

Bush spokeswoman Dana Perino said no laws were broken and that the White House counsel's office signed off on the effort.

"It's not unlawful and it wasn't unusual for informational briefings to be given," Perino said. "There is no prohibition under the Hatch Act of allowing political appointees to talk to other political appointees about the political landscape in which they are trying to advance the president's agenda."

She added: "These briefings were not inappropriate, they were not unlawful, they were not unethical."

Some Democrats beg to differ.

They have alleged that at the end of the January presentation at GSA, Administrator Lurita Doan asked all present to consider how they could use the agency to "help our candidates" in 2008. They also question whether the PowerPoint demonstration Jennings used violated the Hatch Act.

At the same time that Bloch is investigating the White House, the Bush administration is investigating Bloch for his handling of Hatch Act cases - as well as a complaint filed against Bloch by a group of career Office of Special Counsel employees and four public interest groups.

The complaint alleges that Bloch created a hostile work environment with retaliatory acts against his employees. It states that 12 career employees were involuntarily reassigned because they were believed to have been involved in whistle-blowing. The complaint, being handled by the Office of Personnel Management's inspector general, also alleges that Bloch did not enforce bans against discrimination based on sexual orientation in the federal work place.

"The OPM investigation is a completely separate matter," said Loren Smith, a spokesman for Bloch, who has denied the allegations in the complaint.

Debra Katz, an attorney representing the employees, alleged that Bloch launched the investigation into political activity at the White House because he feared repercussions from the investigation of his own activities.

The White House would find it difficult to fire Bloch if he is leading an investigation into the White House, she suggested in a letter to White House counsel Fred Fielding. The letter, released on Thursday, asks that Bloch be required to recuse himself from the White House investigation, and that it be reassigned to another government inspector general.

Smith, the Bloch spokesman, denied that the decision to begin the investigation was a response to the probe of Bloch. "This is about complaints that have come before our agency," Smith said. "We would deserve criticism if we didn't investigate."

##########

National
It's Time To Outlaw Paperless Electronic Voting in the U.S. (EAC mentioned)

By David L. Dill
VerifiedVoting.org
Vote Trust USA
April 26, 2007

Four years ago, when I began publicly opposing paperless electronic voting, passing a Federal law to require voter-verified paper records (VVPRs) seemed an impossible dream. Rep. Rush Holt introduced such a bill in 2003, and another in 2005, but both bills languished in committee until the clock ran out.

The dream is now achievable, due in part to the unending stream of problems caused by paperless voting machines in recent years. HR 811, the third incarnation of the Holt bill, is a critical measure needed to protect the integrity of our elections, and it now has very good prospects of being enacted. It already has 210 co-sponsors in the House, where only 218 votes are required to pass it.

There are two provisions in HR 811 that are especially vital for restoring trust in American elections: A nationwide requirement for voter-verified paper records, and stringent random manual counts of those records, to make sure they agree with the announced vote totals. The requirements in the Holt bill are superior to those in almost every state of the country (there are now 22 states with significant amounts of paperless electronic voting, and only 13 states require random audits of VVPRs).

Success is not assured, however. The forces that have blocked previous bills are still active, especially vendors of current poorly performing equipment. Also, various concerns, reasonable and otherwise, have been raised about the bill by other parties.

Some groups insist on optical scan machines, which read and count hand-marked paper ballots, and are not supporting HR 811 because it still allows the use of touch-screen machines. However, under HR 811, those machines must be equipped with so-called voter-verifiable paper trails, which print a paper copy of the vote that can be reviewed by the voter before being cast. Most of the current generation of inferior paper-trail machines would not be allowed under HR 811, which requires the machines to preserve the privacy of voters and requires the VVPRs to be printed on high-quality paper. This will create a strong incentive for local jurisdictions to purchase optical scan equipment. Furthermore, HR 811 makes the paper records the official ballots of record in audits and recounts, and requires election officials to post a notice explaining to voters the need to verify their VVPRs.

I would personally prefer to see optical scan machines be used nationwide, if supplemented by equipment to allow voters with disabilities to vote privately. If groups objecting to HR 811 can cause such a bill to be introduced and line up the votes in Congress to get it passed, that bill will have my support. Meanwhile, those of us who have actually talked to Congressional staff have not seen any significant support for such a requirement. It seems that we have a choice between HR 811 or continuation of our current "Kafka-esque" paperless system (as a French politician recently described it).

Another small but noisy contingent is opposing HR 811, sometimes without revealing their true agenda, because they will be satisfied only with a nationwide system of hand-counted paper ballots. In theory, we could adopt hand-counting of all ballots. However, hand counting is rarely used now. It is politically unrealistic to believe that the overwhelming number of jurisdictions that have been using automated voting in various forms for 40 years or more are going to go back to hand counting. HR 811 does not prevent hand counting for those communities who want to do it, but it provides a realistic solution for the rest of us.

Some are troubled by the role of the Federal Elections Assistance Commission (EAC) under the bill. Like many others, I, too, lack confidence in the EAC as currently configured. But HR 811 gives only minimal responsibilities to the EAC. I can live with that if the other provisions of the bill are enacted.

Finally, election officials have expressed concern over whether the time frame of HR 811 is feasible. On the one hand, I want passionately to avoid potential meltdowns in the 2008 general election, and I am not convinced that the possibility of simply purchasing optical scan equipment has been adequately considered by those jurisdictions currently using paperless electronic voting. On the other hand, it is obviously necessary to allow adequate time for implementation of the bill. Congress has heard all sides of this argument, and I am confident that they will strike the right balance. If the implementation date needs to be extended, I hope it will be done in a way to encourage earliest possible elimination of paperless electronic voting, so that the maximum number of voters will be protected in 2008.

HR 811 will no doubt change as it travels down the long, winding legislative road. With some luck, the bill will survive with the key provisions intact, and may even improve.

A good bill that becomes law is better than a great bill that doesn't. HR 811 will start moving soon. Please ask your U.S. Representative to support it.

##########

Texas
Homer says no to voter ID bill (EAC mentioned)

By Mary Madewell
The Paris News
April 26, 2007

State Rep. Mark Homer, D-Paris, has voted against House Bill 218, a bill requiring voters to present photo identification at the polls.

"I voted against a bill that would substantially decrease voter participation in Texas," the District 3 lawmaker said, noting the bill is an "assault on Texans' voting rights."

The bill, opposed by leaders of AARP, the League of Women Voters and other groups, passed the House on a 76-69 vote.

"The facts show we do not have a voter impersonation problem or voter fraud epidemic in this state," Homer said. "This is part of an effort to keep seniors, minorities and low income voters from voting, which is almost 60 percent of my district!"

If House Bill 218 passes in the Senate, it would require voters to present a photo ID card plus a valid voter registration card to vote.

"As a practical matter, this requirement would disenfranchise thousands of elderly and minority Texans by denying the right to cast a ballot that counts," Homer said.

In 2006, Brennan Center for Justice found 25 percent of African Americans, 18 percent of seniors 65 or older, and 15 percent of voters earning under $35,000 a year do not have government-issued photo identification.

For many seniors and working families, getting a photo ID takes time, money and mobility that others may take for granted, Homer said. A study commissioned by the Federal Election Assistance Commission, conducted by researchers from Rutgers and Ohio State Universities, also found in 2004 states with voter identification laws have experienced a turnout drop of 3 percent, with a 5.7 percent drop in African American voters and a 10 percent drop in Hispanic voters.

Homer cites a recent article by Royal Masset, long time Republican consultant and avid opponent of the House bill.

"The most credible recent study on illegal voting in Texas was done by Attorney General Greg Abbott last year. As best I can determine, he found no cases of illegal aliens casting votes with fraudulent registration cards. At best maybe five illegally cast votes he found could have been prevented because of HB 218, though I suspect the real number would have been zero," Masset stated.

"HB 218 is a poll tax, since photo IDs are not free," Homer argued. "I thought we ended the poll tax 40 years ago."

"I am saddened that the House leadership has allowed partisanship to trump support for our basic constitutional rights," Homer said. "This bill will particularly hurt seniors, and it will excessively burden many Texans, effectively limiting their right to vote."

Another attempt to deny voting rights to Texans, House Bill 626, has been postponed until Monday, Homer said. He said that legislation would literally end voter registration as we know it today by requiring every person who registers to provide "proof of citizenship" in the form of a certified copy of a birth certificate ($23 cost), citizenship papers ($200) or a valid passport, mailed in a business reply envelope.

The days of voter registration tables, door-to-door drives and postcard registration would become a thing of the past, possibly in violation of federal law, Homer said.

"It is extremely disappointing that the Texas House would support legislation making it more difficult for honest citizens to exercise the rights that so many have sacrificed so much to protect," Homer said. "I hope the Senate will show better judgment."

##########

* Also included below is the weekly summary of election reform news and opinion that appears in electionline.org today.

##########

----- Forwarded by Bryan Whitener/EAC/GOV on 04/27/2007 10:46 AM -----

listadmin@electionline.org
04/26/2007 03:36 PM
Please respond to listadmin@electionline.org

To bwhitener@eac.gov
cc
Subject electioline Weekly-- April 26, 2007

electionline Weekly - April 26, 2007
electionline.org

I. In Focus This Week

Rep. Juanita Millender-McDonald remembered as 'voice of reason'

Colleagues, election officials recall trailblazing lawmaker

By Kat Zambon
electionline.org

Election officials and members of Congress this week remembered Rep. Juanita Millender-McDonald, D-Calif., as a passionate advocate for election reform particularly in her role as chair of the Committee on House Administration.

Millender-McDonald died Sunday in her Carson, Calif. home, less than two weeks after requesting a leave of absence to seek treatment for colon cancer.

"It was indeed devastating to learn of Juanita's death. We were on a first-name basis and spoke frequently - most recently on March 22 prior to the next day's House Elections Subcommittee hearing where she read into the record my letter to her opposing H.R. 811," said Conny

McCormack, Los Angeles County registrar-recorder/county clerk. "She was a voice of reason in this highly-emotionally charged debate [about] election "reform" making her loss all the more incalculable. I have several photos in my office of us together over the past few years and will always hold her memory in the utmost respect."

Millender-McDonald was recently re-elected to represent California's 37th district. As control of Congress changed from Republican to Democrat, Millender-McDonald was promoted from ranking member to committee chair in the Committee on House Administration, which is charged with the oversight of federal elections.

Soon after becoming committee chair, *The Hill* reported that Millender-McDonald wrote a letter to Congress requesting the remaining $800 million that had been authorized but not yet appropriated for the Help America Vote Act (HAVA).

She held a number of hearings on election reform issues, mostly focusing on the specifics of H.R. 811, the updated version of a bill authored by Rep. Rush Holt, D-N.J., requiring, among other things, electronic voting machines to produce voter-verified paper audit trails. Earlier this year, she hosted an expo for voting machine vendors in the House Administration Committee's hearing room, to help members of Congress better understand the voting machines in question in legislation considered by the panel.

"America has lost a passionate advocate of free and fair elections," a statement on the committee's Web site said.

"Congresswoman Millender-McDonald and I have been good friends who have worked well together since she was elected. I have always admired her passion both as Chairwoman of the House Administration Committee, and in representing California's 37th District," Rep. Vernon Ehlers, R-Mich., Committee on House Administration ranking member said in a statement.

Millender-McDonald was the first black to serve on the Carson City Council, the first Democratic chair of the Congressional Caucus for Women's Issues and the first black woman to chair a Congressional committee, the *Baltimore Times* reported.

"Juanita Millender-McDonald was a trailblazer, always advocating for the full participation of all Americans in the success and prosperity of our country," House Speaker Nancy Pelosi said.

Pelosi assigned Rep. Robert Brady, D-Pa., to serve as committee chair after Millender-McDonald requested to take a leave of absence.

However, Brady is seeking the nomination for mayor of Philadelphia in a five-way primary scheduled for May, Northeastern Pennsylvania News reported. Rep. Zoe Lofgren, D-Calif., is next in line for committee chair should Brady be unable to serve.

California Gov. Arnold Schwarzenegger (R) is expected to call a Special Vacancy Election next week which will trigger an election to fill Millender-McDonald's seat in late June.

The rules of the special election call for all candidates to run on a single ballot. If a candidate does not receive at least 50 percent of the vote, the top two vote getters will face off in another special general election in late August.

The funeral is scheduled for April 30 in Los Angeles. Aides to Democratic leaders said that it was likely that no votes would be scheduled for that day to allow members to attend the funeral where Pelosi will offer a eulogy according to *Congressional Quarterly* . Millender-McDonald is survived by her husband, five children and several grandchildren.

International elections present different challenges

Nigerians face fraud, French try electronic voting, and Bhutanese prepare for first vote

By Kat Zambon
electionline.org

Observers in Nigeria hope that 2007 will mark the first time one democratically elected president transfers power to another as President Olusegun Obasanjo prepares to leave office at the end of his second term.

However, getting to that day in May when Obasanio takes his leave and a new president is sworn in has been anything but a peaceful process including the actual presidential election on April 21.

Election observers from the E.U., Human Rights Watch, the International Republican Institute and the National Democratic Institute state that they saw widespread fraud, intimidation and violence during the election.

Dave Peterson, senior director of the Africa program for the National Endowment for Democracy (NED) observed the April 21 presidential elections in Bauchi State in northern Nigeria.

Peterson pointed out that the lack of serial numbers on the ballots was one reason why many polling places did not receive as many ballots as they needed. Elections officials eventually determined that each stack contained 100 ballots but "it was very difficult to distribute them," Peterson said.

Because the ballots didn't arrive in Nigeria until the night before the election, officials delivered ballots the day of the election and polls didn't open on time. When polls finally did open, poll workers found that voter registration lists weren't alphabetized, making it hard to check in voters. As long lines formed, poll workers began giving ballots to voters who showed their registration cards, though some voters were turned away because poll workers couldn't find their names in the book.

"The shame is that the national INEC [Independent National Electoral Commission] officials, and really the government itself failed the Nigerian people," Peterson said. "Nigeria can do a lot better than this, that's what's so frustrating . it's got the resources, it's got the educated people, there's no reason it couldn't put together really good elections. It's the great shame of West Africa."

A post-election report by Human Rights Watch (HRW) detailed incidents that included late opening polls, supply shortages, vote buying, and the seizure of ballot boxes by gangs of thugs.

Among the problems noted on Election Day:

- Some ballot boxes never made it to the polls and wound up at the home of the local government chair, who said polls closed early because of "the massive enthusiasm of the voters." Tally sheets returned showed high turnout with as many as 100 percent of votes going to the ruling People's Democratic Party (PDP).
- Voters were not afforded privacy when voting was allowed and PDP members watched over voters' shoulders as they filled out ballots.
- In Daura, home to presidential candidate Gen. Muhammadu Buhari of All Nigeria's People Party (ANPP), riots began when polling places only received half the supplies needed. Businesses and homes owned by PDP members were burned, two people were killed and six were injured.
- In Yamaltu Deba, INEC and PDP officials provided supplies for the polling places but kept the results sheets, which are the only official record of the results.
- There was no voting in the Gombe state until 3 p.m. because materials arrived late. Six polling places were open for no more than an hour. In one polling place, residents said that no more than 130 people had voted while the results sheet showed that 900 votes were cast, 876 of which went to PDP.
- While an electoral officer who was supposed to be monitoring the collation of final results slept in his office, PDP and INEC staff filled in results sheets.
- Opposition party supporters and officials were arrested without being charged before and during Election Day.
- In a Katsina polling place, a police officer who tried to stop the theft of a ballot box was beaten with his own club.

In a statement, the National Democratic Institute said, "In many places, and in a number of ways, the electoral process failed the Nigerian people . As a result at this stage it is unclear whether the April 21 elections reflect the will of the Nigerian people."

Researchers are concerned that Nigerians are growing increasingly frustrated with democracy's failure to solve the country's problems due to corruption among politicians. According to Afrobaromter, a polling service that measures African attitudes, satisfaction with democracy fell to 25 percent in 2005 from 84 percent following Obasanjo's first election in 1999.

In some ways though, signs are improving for democracy in Nigeria. Last year, Obasanjo was prevented from rewriting the constitution to allow him to run for another term. Also, a court decision allowed Atiku Abubakar, the current vice president and Action Congress Party's candidate for president to be placed on the ballot after INEC had initially blocked his bid.

However, the late addition of Abubakar to the ballot led to ballots being printed with only party symbols, not the candidates' names or the ballots' serial numbers, which help prevent fraud. In a post-election television address April 23, Obasanjo understated the situation.

"Our elections could not have been said to have been perfect," he said, suggesting that those who believe the elections were mishandled "should avail themselves of the laid-down constitutional procedure for seeking redress in electoral matters." Ken Nnamani, senate president, also encouraged the aggrieved to go through the legal system.

On April 24, the Coalition of Opposition Presidential Candidates and Political Parties (COPP) asked Nnamani to serve as executive after Obasanjo leaves office May 29 and disband the INEC in preparation for a re-vote. Umaru Yar'Adua, a member of PDP and the president-elect has reached out to Buhari and Abubakar.

"The contest has come and gone. So should our differences . With the elections now behind us, I urge you to join hands with us as we seek to build our country," he said.

French voters bid adieu to Chirac, bonjour to electronic voting

A day after voters went to the polls in Nigeria, round one of the presidential election was held in France.

Although much of the news after the April 22 election focused on the differences between the two winning candidates, the recent elections also marked the first time French voters used paperless electronic voting machines to cast ballots for president.

As many as 1.5 million of 43 million eligible voters used the machines, which were legalized in 2004 and have since been installed in 82 of 36,000 voting districts according to the *International Herald-Tribune* .

French voters reported waiting in line for up to two hours to cast ballots electronically and many voters walked away in disgust, though some said that lines were long because of the high turnout. After the elections, the Socialists, Communists and Green Party members called the deployment of the new voting machines "a catastrophe," according to *The Register* .

A Web site by French citizens concerned about electronic voting, *ordinateurs-de-vote.org* explained that certified electronic voting machines in France come from three different vendors - Nebraska-based ES&S, Nedap, a Dutch company, and Indra, a Spanish manufacturer.

In a March 30 statement calling for a moratorium on e-voting, the Socialist Party pointed out that machines made by Nedap and ES&S have had problems in other countries where they have been used, *The New York Times* reported.

Pierre Bascoulergue said that he went to vote in Issy-les-Molineaux near Paris twice and left both times because it took too long. "I just don't trust these machines," he said.

Paul Verlaine University researchers found that four out of seven voters aged 65 and older could not cast ballots on two of the three types of machines used in the election according to *Agence France-Presse* .

"It's total chaos, we don't understand anything," Suzanne Antoine, a 70 year-old voter in Reims said. "I managed to finish but I prefer the way it was before."

The interior ministry said that there haven't been any problems with the voting machines since they were first used in 2003.

Before French citizens started using electronic voting machines, they simply filled out ballots and dropped them into a transparent ballot box, Richard Soudriette, International Foundation for Election Systems (IFES) president and CEO said.

"The French way of doing that [using a transparent ballot box] has really caught on in terms of elections all over the world," he said, particularly in emerging democracies where they "really embrace the idea . to ensure that boxes didn't arrive at the polling place already full."

Soudriette felt confident that French voters would easily adapt to electronic voting machines and pointed out that France was one of the first countries to experiment with internet voting and one of the first places where people used computers in their homes.

Winning candidates Segolene Royal, the Socialist Party candidate on the left (who would be the first female president if elected) and Nicolas Sarkozy, former interior minister and Union for a Popular Movement (UMP) candidate on the right will face off in a general election May 6.

Democracy coming to Bhutan

After Bhutan's king Jigme Singye Wangchuck announced plans to abdicate his throne and ordered parliamentary elections to be held next year, more than 125,000 citizens went to the polls April 21 in a mock election. Voters chose between fake political parties druk yellow, druk blue, druk green and druk red (the druk is a thunder dragon, Bhutan's national symbol).

In a country where citizens only recently received Internet access and where improvement is marked by an increase in gross national happiness, Voice of America reported that voters were unsure of what democracy means and asked if they have to pay to vote or if they will be punished for not voting.

The king is very popular and few see the need for change. But other voters are excited about what democracy has to offer though some haven't been impressed by the efforts at democracy seen in other South Asian countries.

"We've lived a very happy life under the king," Kensho, a farmer near Zhanglaka told *The Christian Science Monitor* . "I'll go to vote - I have a card. But I don't want one tiny thing to change."

Dasho Kunzang Wangdi, election commission chief, said that the purpose of the mock election was to prepare people for the upcoming vote and ensure that voters know what to expect. "On the whole, [the] response is very good, people are very excited," Wangdi said.

India's election commission met with Bhutan's in December and provided $2.3 million to help Bhutan with the mock vote according to the *Daily Bulletin* .

The election commission has sought volunteers to start political parties. Tshering Tobgay is a former civil servant starting the People's Democratic Party. "We are not starting a party because we have an ideology. We are not starting a party because we have a vision for a better Bhutan. We are starting a party because the king has ordered us," Tobgay said.

Kuensel Online, Bhutan's news Web site reported that voters walked to the polls in their best clothes and carrying their lunch. After asking a poll worker what to do in the voting booth, a voter asked, "But what color should I press?"

"Pick the color you like best," the poll worker answered. The voter soon left with a sheepish grin on his face.

Each druk came with a platform in the mock election - druk blue was anti-corruption and supported extending free health care and education, druk green for environmentally friendly development, druk red for industrialization and druk yellow for preserving and promoting Bhutan's culture and heritage.

Druk yellow won with more than 44 percent of the vote. Next month, druk yellow and druk red, which received 20 percent of the vote, will compete in a mock run-off on May 28.

II. Election Reform News This Week

- The rights of convicted felons to vote met with differing fates in statehouses this week. In Maryland, Gov. Martin O'Malley (D) signed legislation that will allow felons in the Old Line to register to vote as soon as their sentences are complete. Advocates told *The Baltimore Sun* that as many as 50,000 Marylanders could be eligible to vote once the law takes effect on July 1. State Republicans had called on the governor to veto the bill. In Colorado, a House Committee struck down a proposal that would have allowed felons still on parole to vote. The state's Attorney General and Secretary of State had argued that the proposal was unconstitutional. According to a local television station, the proposal had been added as an amendment to an annual technical clean-u! p bill.
- Texas this week took a major step toward becoming the next state to require voter ID at the polls when the state House approved a measure that would mandate either a photo ID or two forms of non-photo ID be presented before casting ballots. Voters without the required documentation would be allowed to cast provisional ballots. According to the *El Paso Times* , the bill is expected to receive final approval in the House and then move to the Senate for approval. The paper said the bill could be altered slightly to clarify that voters would not have to bring both their identify documents and a voter registration card to the polls.
- A state appeals court overturned a misdemeanor election fraud conviction in Racine

County, Wis. concluding that the defendant's "poor supervision" of voter registrars in 2004 didn't amount to a crime. While separate statutes make it a crime to falsify voter registration information and aid someone in doing so, the state provided no evidence that the defendant helped others submit false registrations, only that he didn't monitor those who did, wrote Judge Daniel Anderson in the seven-page opinion. Racine County District Attorney Michael Nieskes told the *Rhinelander Daily News* that the ruling invalidates an earlier plea agreement and reinstates seven felony charges. Nieskes said he would seek a trial on those charges

- Although opinions differ over what caused more than 18,000 under votes in the race for the 13th Congressional District in Florida, one state lawmaker wants to clear up potential problems by giving voters a "choose not to vote" option in future elections. At the urging of Sen. Mike Brown, R-Bradenton, the Senate Ethics and Elections committee this week approved a measure that would offer voters that option in future elections. "It got so dirty and so ugly that I think some people just walked to the polls and said, 'You know what? I don't want to vote for any of these people. I'm just not happy. I don't like my choices,'" Bennett told *The [Lakeland] Ledger* . The House version of the bill (H.B. 387) has not yet been heard in committee, but Bennett said he is confident it will be heard on both floors before the legislative session ends May 4. Nevada ! is the only state where ballots carry a no-choice option.

III. Opinion This Week

National: Voter fraud, II, Primary dates, Department of Justice, Voting systems, EAC, Electoral College
Arizona: Voter ID
California: Election reform, E-votingConnecticut: Optical scan
Florida: Touch-screen machines, Optical scan, II Election reform
Maryland: National Popular Vote
Missouri: Voter registration
Ohio: Cuyahoga County
Texas: Voter ID, II, III, IV, V, VI, VII
Washington: Efficient elections
Wisconsin: Voter ID

Some sites require registration

IV. Job Postings

All job listings must be received by 12 p.m. Eastern on Wednesday for publication in our Thursday newsletter. Job listings are free but may be edited for length. Whenever possible, include Internet information. Please email job postings to mmoretti@electionline.org

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Donetta L.
Davidson/EAC/GOV
04/27/2007 04:06 PM

To Elieen L. Collver/EAC/GOV@EAC
cc
bcc
Subject Re: memo

I am on my way back

Sent from my BlackBerry Wireless Handheld
Elieen L. Collver
----- Original Message -----

From: Elieen L. Collver
Sent: 04/27/2007 04:04 PM EDT
To: Curtis Crider
Cc: Donetta Davidson
Subject: memo

Hello Curtis:

I was reviewing the memo that you brought to the Chair today regarding the research on Voting Fraud and Voter Intimidation. I have sent electronic and hard copies to the commissioners and senior staff. However, I was wondering if there if going to be a separate memo addressing the Voter ID issues. Per your request the staff is in the process of sending emails to your designated inbox and all of those issues. Please advise.

Many thanks,
Elle

Elle L.K. Collver
Special Assistant to the Chair
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
office: (202) 566-2256
fax: (202) 566-1392
[redacted]

Curtis Crider/EAC/GOV
04/27/2007 04:33 PM

To Elieen L. Collver/EAC/GOV@EAC
cc
bcc
Subject Re: memo

The response dealt with the Chair's April 23 memo to us which deal with the fraud report. The review we are conducting covers the voter fraud and the voter intimidation projects.

Curtis Crider
Office of Inspector General, Election Assistance Commission
Phone - (202) 566-3125
Fax - (202) 566-0957

Elieen L. Collver/EAC/GOV

Elieen L. Collver/EAC/GOV
04/27/2007 04:04 PM

To Curtis Crider/EAC/GOV@EAC
cc ddavidson@eac.gov
Subject memo

Hello Curtis:

I was reviewing the memo that you brought to the Chair today regarding the research on Voting Fraud and Voter Intimidation. I have sent electronic and hard copies to the commissioners and senior staff. However, I was wondering if there if going to be a separate memo addressing the Voter ID issues. Per your request the staff is in the process of sending emails to your designated inbox and all of those issues. Please advise.

Many thanks,
Elle

Elle L.K. Collver
Special Assistant to the Chair
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Washington, DC 20005
office: (202) 566-2256
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[redacted]

Bryan Whitener/EAC/GOV
04/27/2007 04:54 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject Weekly News - Elections & Voting (4-21 to 4-27-07)

Commissioners:

Included below are links to other articles and opinion on elections and voting that have posted over the past week.

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National

Democratic EAC Commissioner Responds to Request by 'Voter Fraud' Report Author to Have Gag-Order Lifted

A statement has been released by Rosemary Rodgriguez, the U.S. Election Assistance Commission (EAC)'s newest, Democratic appointee in reply to yesterday's statement by writer and researcher Tova Andrea Wang, a Democracy Fellow at the Century Foundation. The statement comes in the wake of our report yesterday detailing Wang's statement calling on the EAC to lift the gag-order that's been placed on her, so that she might respond publicly to the controversy concerning the EAC's alteration and withholding of the bi-partisan report she submitted concerning baseless allegations of an epidemic of "Voter Fraud" in America — despite longstanding GOP claims to the contrary.

Should We Send EAC Commissioner Rodriguez a "Free Tova Wang" T-Shirt? (Rick Hasen)

Following up on this post, new EAC Commissioner Rosemary Rodriguez has issued this statement. A snippet: "I cannot bind the Commission, as one member, but I believe that the EAC should immediately respond to Ms. Wang's request. I further believe that releasing Ms. Wang to discuss her work for the EAC will be a positive step as we endeavor to operate with more transparency." Bravo for Commissioner Rodriguez! I thought courage left the EAC with the departure of Commissioners Soaries and Martinez. I'm glad to be proven at least 1/4 wrong. UPDATE: I just got an email with the EAC's periodic updates (EAC "Newsline"). It not only links to the Rodriguez letter. It also links to an April 16 letter from Commissioner Hillman, explaining her reasons for voting not to release the draft EAC report on fraud and calling for the IG to investigate the EAC's handling of the two reports. The same day, the EAC requested the IG review. Commissioner Hillman's views on the release of the EAC report are misguided. If the EAC is going to commission research, it should allow for that research to be released. If the commission believes the research is flawed, it should so state (or it could take the step of disavowing the research, as it did---pretty indefensibly in my view---with the voter id and turnout research). It should also impose no "gag orders" on its contracted researchers. The truth in social science emerges from discussion, not silence. It is interesting to me that Commissioner Hillman did not join Commissioner Rodriguez in calling for the EAC to at the very least respond to Wang and further to allow her to speak. Of course, if Commissioner Hillman did so, the EAC could split 2-2 on party lines, which certainly would undercut the agency's hopes for "bipartisanship"in election administration. Ideally, all 4 commissioners should simply vote to let Wang and all other EAC researchers talk after their research is released and put this behind them.

'News Worth Noting' In 5-Year Bush Effort, There's Scant Evidence of Voter Fraud

The Black Chronicle--Five years after the Bush administration began a crackdown on voter fraud, the Department of Justice has turned up virtually no evidence of any organized effort to skew federal elections, according to court records and interviews....A federal panel, the Election Assistance Commission, reported last year that the pervasiveness of fraud was debatable. That conclusion that played down findings of the consultants who said there was little evidence of it across the country, according to a review of the original report.

National / Texas

A (Poorly) Calculated Risk

Research so far says that while impersonating a legal voter is pretty rare (mentioned on page 9 of this Election Assistance Commission report), states with photo ID requirements take a serious hit in voter turnout

Arizona

Bill would make early ballot request recurring

Arizona early voters would have to request early ballots just once, not for every election, under a bill the state Senate preliminarily approved Wednesday.

California

Electronic voting dilemma

After spending about $19 million to twice buy electronic voting machines, Riverside County taxpayers might have to do it again.

Sequoia machines supposed to tally election results quicker

Riverside County Supervisors bought into electronic voting seven years ago on the promise it would provide quicker election-night returns and save taxpayers money.
Election integrity advocates wonder whether e-voting has done either. The original $14 million voting machine was supposed to save taxpayers $600,000 annually - the cost of printing paper ballots.

Colorado

Lawmakers Strike Plan To Allow Felons On Parole To Vote

A House committee on Tuesday struck a provision that would have allowed felons on parole to vote after opponents said it was unconstitutional. The amendment, introduced by Sen. Peter Groff, D-Denver, at the request of the American Civil Liberties Union, would have given felons on parole the right to vote.

Florida

Fla. Senate Backs Election Reforms

In an effort to make sweeping changes to the state's election system, Florida senators gave preliminary approval Thursday to a catch-all voting reform package that would use $28 million in federal funds to replace touch-screen voting machines with a paper ballot system.

Senate passes election reforms, but House support is waning

In an effort to make sweeping changes to the state's election system, Florida senators gave preliminary approval Thursday to a catch-all voting reform package that would use $28 million in federal funds to replace touch-screen voting machines with a paper ballot system. It would also move up the state's presidential primary from March to the last Tuesday in January, making it among the earliest in the nation. But even as the Senate moved the bill forward, the House sent signals that it may not have enough support to pass it as the Legislature heads into its final days.

Indiana

Floyd County stumps for poll workers

There are some holes to fill in the roster of 170 primary election poll workers, Floyd County Clerk Linda Moeller said Tuesday. Each of the city's 34 polling places needs two clerks, two judges and an inspector. Each party is represented by a clerk and a judge; the inspectors will all be Democrats through 2010 because the county's ballots favored a Democrat for secretary of state last fall. Workers would need to attend training for two to four evening hours next week, Moeller said. A poll worker must be a registered voter in Floyd County and not be related to any candidate on the ballot.

Massachusetts

Voting machines to be unveiled

The AutoMARK system was subsequently chosen and is being rolled out across Massachusetts in order to comply with the Help America Vote Act (HAVA) of 2002. "Massachusetts has moved carefully and deliberately to get the most accessible, secure and reliable machine, and to avoid the problems other states have experienced with new technologies in voting equipment," said Galvin. "After extensive testing and analysis for security, I have determined that the AutoMARK terminal is the one that will best enable voters with disabilities to cast their ballots without the assistance of another person."

Democrat operatives receive probation
Deal resolves case alleging voter fraud. Two veteran Democratic political operatives were sentenced yesterday to six months' probation with 40 hours of community service after reaching a plea agreement with prosecutors in a 3-year-old voter fraud case.

Michigan

New election fees will save townships money
It's one of those win-win situations that seem to happen so rarely in government. The Branch County board Wednesday afternoon approved new fees the office of Clerk Terry Ann Kubasiak will charge townships, cities and villages for the programming of their new, state-of-the-art voting machines for elections. The fees will be less than the vendor charges, and the money will be additional revenue for the county.

Missouri

Missouri's Failed Experience with DREs
The first real signs of failure in Missouri's electronic voting experiment came last November from voters in some of the smaller, less sophisticated counties. In the general election last year fifty-four (54) of these smaller Missouri counties used almost 1,000 new direct electronic recording (DRE) voting machines at a cost of almost $4.5 million dollars.

Cloud Looms Over Mayoral Election Results
Questions have arisen in the black community over the disclosure that some of the votes from the March 27, mayoral election were not turned in until the next morning. Instead of losing the mayor's race by 1,010 votes, mayoral candidate, Alvin Brooks, learned this week that he only lost by 850 votes to Mayor-elect, Mark Funkhouser. THE CALL spoke with both Ray James, the Republican director of the Kansas City election board and Mrs. Sharon Turner Buie, the Democratic director.

Ohio

Democrats named to elections board
Secretary of State Jennifer Brunner on Monday named two Democratic lawyers to Cuyahoga County's four-member elections board: Eben "Sandy" McNair and Inajo Davis Chappell. The appointments nearly re-establish the board after Brunner forced the two Democrats and two Republicans to resign. Brunner has argued that new board members are needed to restore voter confidence in the county's troubled elections process.

Pennsylvania

Justice Department Resolves Voting Rights Lawsuit Against Philadelphia
The Justice Department today reached a settlement agreement with the City of Philadelphia related to allegations that the city violated the Voting Rights Act, the Help America Vote Act (HAVA), and the National Voter Registration Act (NVRA).

Franklin County To Use Paper Ballots This Election
Franklin County has decided to stick with paper ballots for the upcoming election. "If someone is just having trouble seeing the small print on the ballot, they can feed their ballot into this machine, they can pull it up on this machine, and it will pull it up on this screen. At the bottom there is a zoom in and zoom out feature so it blows it up, so they can better able read it. There is also a contrast feature, so maybe they can see the white print on a black background better than the other. To vote they can just touch the button. And there are also headsets for those who are blind," says Beyers. They are also offering demonstrations on machines for the visually impaired. "The blind voters that have used it were really excited about being able to vote independently, they were able to vote a paper ballot at the polling place just like everyone else," says Beyers.

Tennessee
City, Election Commission tussle over elections chief
The Davidson County Election Commission is trying to shake itself of some city lawyers. Davidson County Administrator of Elections Ray Barrett, requested a temporary restraining order against Metro Tuesday in federal court to force the Metro Legal Department to drop its attempt to intervene, on his behalf in the lawsuit that two Jewish voters filed against Metro earlier this month. The voters are attempting to force a rescheduling of this years mayoral run-off vote from the Jewish holiday of Rosh Hashanah, which falls this year on Sept. 13.

Texas / National
A (Poorly) Calculated Risk
Research so far says that while impersonating a legal voter is pretty rare (mentioned on page 9 of this Election Assistance Commission report), states with photo ID requirements take a serious hit in voter turnout that effects minority voters worst of all. (The original research behind that story is here.)

Wisconsin
Election fraud conviction overturned
A state appeals court overturned a misdemeanor election fraud conviction in Racine County, concluding that the defendant's "poor supervision" of voter registrars in 2004 didn't amount to a crime. The District 2 Court of Appeals ruling allows Damien Donnelle Jones of Milwaukee to withdraw his guilty plea, seek a new trial and set aside the 90-day jail term and two years of probation imposed by Circuit Judge Dennis Barry.

##########

Bryan Whitener/EAC/GOV
04/30/2007 10:22 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (4-30-07, Mon)

Commissioners:

The following items are in the news.

##########

National
- EAC Interferes With Florida Decision To Rid the State of Touch-Screen DRE Voting Systems (Gideon)
- Rush Holt hires new chief of staff
- Political Appointees No Longer to Pick Justice Interns (DOJ interns, new hires and Georgia voter ID law)
- Choose the right investigations, Congress (LA Times editorial)

California
- Schwarzenegger Sets Special Election Date to Replace Millender-McDonald

Florida
- New ballots, new worries

##########

National
EAC Interferes With Florida Decision To Rid the State of Touch-Screen DRE Voting Systems (Gideon)

Announces Meeting to Discuss Florida...to be Held in Washington DC...

John Gideon
Brad Blog
April 27, 2007

Yesterday the U.S. Election Assistance Commission (EAC) announced [1] that "Special Circumstances" would require them to hold a public hearing next Tuesday, 1 May in Washington DC. The "Special Circumstances"?

It seems that the state of Florida asked the EAC if they could use funds provided under the Help America Vote Act (HAVA) to replace their present paperless touch-screen DRE voting systems and someone at the EAC told the state that they didn't think it would be alright for the state to spend their HAVA funds for anything like going to a paper based voting system. But, the EAC representative said that the Commissioners would have to get together and vote on the issue.

So, yesterday the commission announced when that vote would take place; May 1. That's three working days from now. That's three days for the state and the state's very active Election Integrity community to prepare their statements in favor of spending the states own funds for their own voting system.

And, this public meeting that is very important to the state of Florida --- will be convened in Washington DC to ensure that the commissioners make it as hard as possible for anyone to attend and voice their opinions.

The EACs "Sunshine Notice" announcement is for a meeting that is murky and as closed as the EAC can possibly make it without directly violating federal law.

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URL to article: http://www.bradblog.com/?p=4466
URLs in this post:
[1] announced:
http://www.eac.gov/docs/EAC%20-%20Sunshine%20Notice%20(%205-1-07%20Meeting%20).pdf

##########

National
Rush Holt hires new chief of staff

Roll Call
Around the Hill
April 30, 2007

Tom O'Donnell, 43, is coming back to the Hill to work as chief of staff to Rep. Rush Holt (D-N.J).

Previously, O'Donnell worked as a vice president for Congressional affairs at the Continental Consulting Group since 2002. From 1989 to 2002, he worked for then-Rep. Lane Evans (D-Ill.) as his military legislative assistant and then legislative director in addition to simultaneously working as a Veterans' Affairs Committee professional staff member when Evans was ranking member on the committee. He also worked as a military legislative assistant for then-Rep. Pat Schroeder (D-Colo.) from 1987 to 1989.

From Boonville, N.Y., O'Donnell earned a bachelor's degree in political science from State University of New York at Plattsburgh.

##########
National
Political Appointees No Longer to Pick Justice Interns (DOJ interns, new hires and Georgia voter ID law)

By Dan Eggen and Amy Goldstein
Washington Post Staff Writers
Saturday, April 28, 2007; A02

The Justice Department is removing political appointees from the hiring process for rookie lawyers and summer interns, amid allegations that the Bush administration had rigged the programs in favor of candidates with connections to conservative or Republican groups, according to documents and officials.

The decision, outlined in an internal memo distributed Thursday, returns control of the Attorney General's Honors Program and the Summer Law Intern Program to career lawyers in the department after four years during which political appointees directed the process.

The changes come as the Justice Department is scrutinized for its hiring and firing practices because of the dismissal of eight U.S. attorneys. Some of the fired prosecutors were removed because they were not considered "loyal Bushies" by senior Justice and White House officials.

Justice officials said the change was prompted by a contentious staff meeting in early December, which included complaints that political appointees led by Michael J. Elston, chief of staff for Deputy Attorney General Paul J. McNulty, had rejected an unusually large number of applicants during the most recent hiring period. Last year, about 400 applicants were interviewed for the honors program -- the primary path to a Justice Department job for new lawyers -- down from more than 600 the year before.

The House and Senate Judiciary committees also are investigating allegations from an anonymous group of Justice employees that most of those cut from the application lists had worked for Democrats or liberal causes and that Elston removed people for spurious reasons that included "inappropriate information about them on the Internet."

Justice officials strongly deny that political or partisan factors play any role in who is chosen for the two programs. But they acknowledged yesterday that the involvement of political appointees helped feed suspicions that the process had been tainted.

"The Justice Department does not, nor has it ever, solicited any information from applicants . . . about their political affiliation or orientation," said Justice spokesman Dean Boyd. But, he added, the changes "should further improve the process and eliminate even the perception of any political influence."

The honors program, established during the Eisenhower administration, is a highly regarded recruiting program that attracts thousands of applicants from top-flight law schools for about 150 spots each year and has been overseen for most of its history by senior career lawyers at Justice. Then-Attorney General John D. Ashcroft reworked the program in 2002, shifting control from career employees to himself and his aides.

The changes alarmed many current and former Justice officials, who feared that the Bush administration was seeking to pack the department with conservative ideologues. Many law school placement officers said in 2003 that they noticed a marked shift to the right in the students approached for honors program interviews.

Complaints about the program emerged again this month after Senate and House investigators received a letter from the unidentified Justice employees, who alleged that hiring at the department was "consistently and methodically being eroded by partisan politics." The letter singled out the honors and intern programs, alleging that senior political appointees appeared to reject applicants who "had interned for a Hill Democrat, clerked for a Democratic judge, worked for a 'liberal' cause, or otherwise appeared to have 'liberal' leanings."

Boyd and other Justice officials said such allegations are without merit. They pointed to statistics showing that Harvard, Stanford, Yale and other elite universities continue to dominate hiring for the honors program. Officials said many of the complaints last fall stemmed from serious delays in the review process, partly because Elston and other political officials were new to the process.

Louis DeFalaise, a career employee and director of the Office of Attorney Recruitment and Management, said in Thursday's memo that his office would oversee the hiring process, which will be handled by career lawyers from various Justice divisions. Similar changes will be applied to the summer intern program, according to the memo, which was obtained by The Washington Post.

"The 2007 changes to these programs represent another step in the department's multi-year effort to enhance these prestigious programs," Boyd said.

According to current and former Justice employees, many of whom spoke about fellow lawyers on the condition of anonymity, the centralization of the honors program selection process in the hands of political appointees markedly changed the profile of the entry-level lawyers hired, particularly in the department's civil rights division.

Since 2002, when Ashcroft adopted the hiring method the department is now abandoning, a large share of honors hires have had strong conservative or Republican ties, according to Justice lawyers and law school career-placement officers.

Bill Condon, an honors hire in the civil rights division who graduated in 2004 from Regent University, a small Christian school in Virginia Beach, recounted his job interview recently in the school's alumni magazine. Condon wrote that, when an interviewer asked him which Supreme Court decision he disagreed with most, Condon cited a 2003 ruling that struck down a Texas law outlawing homosexual acts, a decision that has been a lightning rod for social conservatives.

One of his interviewers, Condon wrote, suggested that, coming from Regent, "I may be interested in some religious liberties cases" the civil rights division was bringing in a new area of emphasis for the division.

According to a former deputy chief in the civil rights division, one honors hire was a University of Mississippi law school graduate who had been a clerk for U.S. District Judge Charles W. Pickering Sr. about the time the judge's nomination by President Bush to a federal appeals court provoked opposition by congressional Democrats, who contended that Pickering was hostile to civil rights.

A few months after he arrived, that lawyer was given a cash award by the department, after he was the only member of a four-person team in the civil rights division who sided with a Georgia voter-identification law that was later struck down by the courts as discriminatory to minorities, according to two former Justice lawyers.

Another honors hire, a graduate of the University of Kentucky College of Law who had been president of the campus chapter of the Federalist Society, displayed a bust of President James Madison in his Justice office, according to a former honors program lawyer who was hired during the Clinton administration. A profile of Madison's face is the logo of the society, which is based on conservative precepts.

"When I started," the former honors program lawyer said, "it was rare you met people whose civil rights credentials were that they were part of the Federalist Society, but it became a commonplace thing."

Justice officials say it is hardly unusual for a lawyer to be a member of the Federalist Society, which has more than 30,000 members in 65 chapters worldwide.

Harvard Law School officials said they contacted the department last fall, after students seeking internships expressed concern that they had not been notified by October whether they would be granted an interview, as the department had promised.

##########

National
Choose the right investigations, Congress (LA Times editorial)

Too many inquiries into minor scandals could be counterproductive.

Los Angeles Times
Editorial
April 30, 2007

THANKS TO Democratic control of Congress and its own ineptitude (or worse), the Bush administration is under investigation on so many fronts that you can't tell the sleuths without a scorecard. But not all scandals are created equal.

The weightiest investigations are the ones being conducted by two Justice Department agencies – the Office of Professional Responsibility and the Office of the Inspector General – into the controversial firings of eight U.S. attorneys. If Inspector Gen. Glenn A. Fine, who demonstrated his independence with a report to Congress about the FBI's misuse of national security letters to obtain bank and phone records, finds fault with Atty. Gen. Alberto R. Gonzales, it's hard to see how Gonzales could cling to office.

Somewhat down the scale we find the hitherto obscure Special Counsel Scott J. Bloch, who is investigating both the firing of U.S. Atty. David C. Iglesias and allegations that the administrator of the General Services Administration once asked how the agency could "help our candidates" for Congress after GSA political employees were briefed by an aide to Karl Rove. While Bloch's operation doesn't have the stature of the Justice Department offices, any finding by the special counsel that the administration violated the law would be embarrassing.

It's Congress, however, not any in-house investigator, that worries the administration most. After years of lax oversight by Republicans, Democrats are relishing their role as inquisitors, whether on the war in Iraq, the Walter Reed Army Medical Center or Army Ranger Pat Tillman's suspiciously portrayed death.

Because Democrats have an obvious vested interest in embarrassing the administration, they would be wise both to pick their fights and to share their battle plans with like-minded Republicans.

To an impressive extent, that is what happened at the Senate Judiciary Committee's hearings on the U.S. attorney firings. Gonzales was put on the defensive not only by Democrats but by Republicans such as Arlen Specter (R-Pa.) and Lindsey Graham (R-S.C.).

It's not surprising that the U.S. attorney affair has provoked bipartisan criticism from Congress. At best, the dismissals were handled in a slapdash way and with unprecedented meddling from the White House. At worst, there was possibly obstruction of justice.

Allegations that the administration violated the 1939 Hatch Act by making a political pitch to political appointees, on the other hand, don't rise to the same level.

Entranced as Democrats may be by visions of Rove in the dock, too many inquisitions into minor affairs may prove to be counterproductive.

##########

California
Schwarzenegger Sets Special Election Date to Replace Millender-McDonald

Roll Call
April 30, 2007
David M. Drucker

California Gov. Arnold Schwarzenegger (R) has set Aug. 21 as the date for the special election to replace Rep. Juanita Millender-McDonald (D-Calif.), who died April 22 after losing her battle with cancer.

The race to replace Millender-McDonald in the overwhelmingly Democratic 37th district could get crowded and contentious, as state legislators facing term-limited careers in Sacramento vie with local elected officials to advance to Washington, D.C. The district is largely made up of Long Beach, a city of more than 400,000 people located in southwestern Los Angeles County.

According to California law, the top finishers for each political party entered in the Aug. 21 contest will advance to a runoff, unless one candidate garners more than 50 percent of the vote in the initial round.

##########

Florida
New ballots, new worries

St. Petersburg Times

By STEVE BOUSQUET
Published April 30, 2007

TALLAHASSEE - The next evolution in Florida's ever-changing system of voting will feature something called "ballot on demand."

A citizen at any early voting site would receive a custom optical scan ballot, matching the voter's residence, language and party affiliation. A voter's choices would be marked on an optical scan ballot by filling in an oval next to each ballot question.

"The benefits of the ballot on demand system, from an election management standpoint, are numerous, " Gov. Charlie Crist told a congressional committee on March 23.

But the change worries a lot of local election supervisors, who run Florida elections.

They warn that it's risky to implement an untried system in Florida in a closely watched and high-turnout 2008 presidential election.

Crist, ever the optimist, has no such fears. He calls it a convenient, thrifty way to ensure paper trails at early voting sites, without the use of touch screen voting machines, which do not provide a paper trail and were discredited after a disputed congressional election in Sarasota.

Crist publicly embraced the ballot on demand idea last month, and decided to retrofit touch screens with printers only for voters with disabilities.

Ballot on demand has been tried in Florida, with absentee voters in last month's election, in one place: Crist's home county of Pinellas.

Supervisor of Elections Deborah Clark said ballot on demand saved time and money in Pinellas' low-turnout March election, but that was done in a "controlled environment." Trying it in the 2008 presidential vote, with a much longer ballot, is another matter.

"My concern is implementing it statewide for the first time in a presidential election. That scares the heck out of me, " she said.

Clark is not alone.

Eleven other election supervisors, including Buddy Johnson in Hillsborough and Pasco's Brian Corley, sent a letter to Crist and his elections expert, Secretary of State Kurt Browning.

Supervisors said a ballot on demand system relies on a work force of part-time poll workers feeding multiple pages into ballot printers, and getting each ballot to the right voter fast, to keep the lines moving.

"Voter dissatisfaction will definitely increase if these limitations make voting times longer. Based on high early voter turnout during recent election cycles, this is almost guaranteed, " the 12 supervisors wrote.

In a followup letter, Terry Vaughan, president of the state association of election supervisors, told Crist that his members "are very concerned with placing into legislation a concept which has had limited use in voting situations."

* * *

Miami-Dade Supervisor of Elections Lester Sola made the same point in testimony before the Senate Ethics and Elections Committee.

Noting that 25 percent of county voters cast early ballots in the last election, and the county prints hundreds of different ballot styles in three languages, Sola said: "The last thing you want is each voter having to sit there waiting while you're printing multiple-page ballots."

Diebold Election Systems operates ballot on demand systems in a number of areas, including King County Seattle Wash., where the firm was responsible for 22, 500 unique ballot styles.

Having multiple printers in place at each early voting site is important, Diebold spokesman Mark Radke said. He added the company is eager to offer it in Florida.

A bill creating ballot-on-demand voting is in legislation (SB 960-1010) that moves up the date of Florida's presidential primary to Jan. 29. The bill passed the Senate on Friday and is awaiting a House vote.

To some election supervisors, the shift to ballot on demand is happening with dizzying speed.

It has only been five years since 15 counties replaced the disgraced punch-card ballots with touch screens at a cost of hundreds of millions of dollars.

The touch screens are now quickly being phased out of existence, even though those counties still owe tens of millions of dollars for them.

Crist dismissed the notion that he's moving too fast with the ballot-on-demand system. The greater goal, he said, is to require a paper trail of every vote.

"I think it makes sense for the most precious right we have in democracy - your right to vote, " Crist said.

Secretary of State Browning recently went to Phoenix's Maricopa County, which uses ballot-on-demand voting for absentee ballots. He said he was confident it can be successful in Florida.

"I respectfully disagree with my former colleagues, " said Browning, the former Pasco election supervisor. "We have this fear of the unknown."

Steve Bousquet can be reached at bousquet@sptimes.com [redacted]

[Last modified April 30, 2007, 01:52:29]

##########

Bryan Whitener/EAC/GOV
04/30/2007 06:03 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Today's media inquiries (4-30-07, Mon)

Commissioners,

(1) Leslie Clark of the Miami Herald plans to attend tomorrow's public meeting. Today she asked whether Florida is required to abide by EAC reply to their request. We said that EAC is the cognizant agency for most of the HAVA funding programs. We said that EAC therefore has the responsibility to advise and instruct states regarding the appropriate use of these funds consistent with the provisions of HAVA as well as circulars developed by OMB Circulars A-87 which governs the use of federal funds to purchase goods for state and local governments.

(2) Dana Burke, News Editor for the Citizen in Webster, TX is working on a story regarding voter identification requirements in Texas. She said Democrats opposed to the new legislation have referred to EAC's voter ID study and point to a correlation between more stringent voter id requirements and lower voter turnout, especially among minority groups. She noticed EAC's statement regarding a request for review, asked if the study is considered valid and whether the assessment by opponents of the legislation is correct. We sent her the following two links and replied that our Inspector General is currently reviewing the circumstances surrounding this research and that when that process is complete we'll be glad to discuss it further.

04/16/07 - EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects

News Release: 3/30/07 - EAC to Launch Comprehensive Study of Voter ID Laws

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Bryan Whitener/EAC/GOV
05/02/2007 10:10 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (5-2-07, Wed)

Commissioners:

The following items are in the news.

##########

National
- **The Secret Weapon of 2008: Felons are getting the vote back**

Florida
- **Elections panel OKs federal funds to replace Florida voting machines** (Associated Press)
- **Federal funds pave way to voting paper trail** (Miami Herald; Julie Hodgkins referenced)
- **Money For Paper Ballots OK'd** (Tampa Tribune; Julie Hodgkins referenced; Florida State Senate's lead proponent of Crist initiative says Browning didn't need EAC approval)

Texas
- **House approves bill requiring state to verify voters' citizenship**
- **Voter ID bill hinges on ailing senator**
- **ID rule will bolster integrity of elections** (commentary)

##########

National
The Secret Weapon of 2008: Felons are getting the vote back

The Secret Weapon of 2008: Felons are getting the vote back–and Republicans aren't stopping them.

Slate.com
Jurisprudence: The law, lawyers, and the court.
By Emily Bazelon
Friday, April 27, 2007

As a bonus of the U.S. attorney scandal, we've learned about the Bush administration's penchant for bogus voter-fraud prosecutions, which deported immigrants for mistakenly filling out voter-registration cards. We've also learned about the Justice Department's questionable voting-law interpretations, which led states to mistakenly scrap tens of thousands of voter applications. One thing this administration is good at, it turns out, is vote suppression. And yet somehow, it hasn't stopped one swelling of the voting rolls that is hardly in the GOP's interests: The re-enfranchisement of felons, in red states as well as blue ones.

Earlier this month in Florida, it was one of the GOP's own, Gov. Charlie Crist, who did the vote-restoration deed. Invoking themes of forgiveness and redemption over Easter week, Crist persuaded fellow Republicans on the state clemency board to automatically restore the vote to nonviolent former felons who had paid any restitution they owed. Florida has 950,000 ex-offenders. Crist gave the vote back to upward of 750,000 of them. Think about it: George W. Bush won Florida by 537 votes in 2000 and about 380,000 votes in 2004.

When their voting power is restored, ex-offenders tend to vote in presidential elections at a rate of 35 percent (compared to 52 percent of the rest of us), but they do overwhelmingly vote for Democrats, according to sociologists Jeff Manza and Chistopher Uggen, authors of *Locked Out: Felon Disenfranchisement and American Democracy*. Even if the people Crist re-enfranchised remember him personally at the ballot box, they're not in the least likely to vote for the rest of his ticket. Along with President Bush, Manza and Uggen came up with a list of Republican senators who are in office because felons couldn't vote for their opponents. The sociologists look at the thin margins by which these senators won, calculate the likely voting rates for felons, and conclude that if they could have voted, they'd have cast enough votes for the Democratic rivals to tip the election. Sens. Mel Martinez of Florida and Jim Bunning of Kentucky are the most recent additions to Manza and Uggen's list. In other words, Crist's reform could really cost the GOP.

And yet Florida is in good company. You could almost say the country is facing a restore-the-vote craze–and that for some reason no one much seems to be opposing it. This week, Maryland gave back the vote to more than 50,000 former felons who have completed their prison sentences and finished with probation and parole. Democratic Gov. Martin O'Malley signed that bill over calls for a veto from Republicans. In November, Rhode Island voters approved the first state referendum to restore the vote to felons. The margin was slim–51 percent to 49 percent–but so were the resources spent by the vote-restoration side: only $300,000.

In the last several years, other states have removed lifetime ballot bans or waiting periods for ex-offenders: New Mexico (more than 68,000 regained the vote in 2001); Connecticut (33,000 people on probation regained the vote in 2002); Delaware (switched from lifetime ban to five-year waiting period in 2000); and Texas (eliminated two-year waiting period in 1998, allowing more than 300,000 former felons to join the rolls). In Colorado, a restoration bill is pending. In Kentucky, an effort to amend the state constitution to eliminate a lifetime voting ban for felons died recently, but it will be reintroduced next year and has a chance of passing. In Virginia, the only other remaining state with a lifetime ban, the *Roanoke Times* urged the legislature to follow Florida after Crist's show of mercy this month.

In addition to the number of states, the most surprising thing about all of this vote-restoration is the increasingly muted quality of the opposition. The argument for allowing ex-offenders to vote is that they've paid their debt and should be reintegrated: If we treat them like full citizens, they'll be more likely to act like full citizens. The argument against allowing ex-offenders to vote is that they forfeited this right when they committed their crime, and anyway we don't want the likes of them deciding who gets elected. In 2002, some senators made that argument in debating a federal re-enfranchisement bill, and in 2004, the *National Review Online* had a run of commentaries that accused Democrats of cynical vote-grabbing over the issue. Maybe I am looking in the wrong places, but this time around I can hardly even find a pissed-off blog post. After the Florida move, Tucker Carlson feebly suggested that "if you're going to let people decide who runs the country, you ought to let them hunt and have a gun." And here's an unfunny call for a "felon barnstorming tour" from a columnist at the *Palm Beach Post*. But that's about it. Far more editorial pages and commentators applauded Crist and even wondered, fawningly, whether he could be a new breed of politician.

While that's a bit much, it is significant that a Republican governor decided that his interests lay with the felons. Maybe Crist has been moved by fellow conservatives Chuck Colson and Jack Kemp, who argue for raising up rather than condemning former criminals. Or maybe the governor thinks the issue plays well with moderate voters–public opinion polls show that about 60 percent of Americans support letting felons vote after they've completed their sentences, according to Manza and Uggen. Then there's the questionable history of Florida's law, which dates to 1868 and the post-Civil War days of poll taxes and intimidation of black voters. Also, Manza and Uggen have found, as Jason DeParle points out in the *New York Review of Books*, that "the more African-Americans a state contains, the more likely it has been to ban felons from voting."

Other Republicans have gone where Crist went before him: George W. Bush signed the Texas re-enfranchisement bill when he was governor. Is restoring the felon vote starting to be hard to oppose? If that's so, then the 2008 electoral map may look bluer--in spite of the Justice Department efforts to tamp down the vote on other fronts. More than 5 million people couldn't vote because of their criminal records in 2004. That's a lot of ballots.

Emily Bazelon is a Slate senior editor.

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Florida
Elections panel OKs federal funds to replace Florida voting machines (Associated Press)

BY STEPHEN MAJORS
The Associated Press
The Gainesville Sun
May 2, 2007

TALLAHASSEE - The U.S. Election Assistance Commission will allow Florida to use federal funds to replace the state's touch-screen voting machines with a verifiable paper-trail system, U.S. Sen. Bill Nelson's office and the Florida Department of State said Tuesday.

The Florida Legislature is on the verge of passing an elections bill that calls for the use of nearly $28 million in federal funds to replace touch-screen voting machines used in 15 counties. But until Tuesday - when the Election Assistance Commission said during a public hearing in Washington that it would permit the use of federal funds - state lawmakers and Florida Secretary of State Kurt Browning did not know for sure whether they could rely on federal money from the Help America Vote Act.

Despite the high priority Gov. Charlie Crist and most lawmakers - Republican and Democrat - have given to the replacement of the machines, a tight budget year has left the Legislature hard-pressed to find state funding for it.

The Department of State expected to receive more details from the commission late Tuesday or today on how the state can disburse the federal funds.

"We'll work with the House and Senate on how HAVA funds can be used," said Sterling Ivey, a spokesman for Browning.

Nelson had written a letter to the commission, encouraging them to respond to Florida's "initiative and commitment to reforming voting systems" by allowing the use of federal funds.

The commission held Tuesday's hearing in order to give the state Legislature enough time to work out the necessary details before the 60-day legislative session ends Friday.

Browning testified in Washington about what Florida wanted to do with the funds. The state used some HAVA funds to reimburse itself for the purchase of touch-screen machines to replace punch card ballots after the 2000 election debacle, he said. But the majority of the expenditures were made by the counties and then reimbursed by the state.

"I see that the climate and political environment has changed somewhat and there is a perception across the state that indicates many voters do not trust electronic voting machines and want to cast a paper ballot," he said in prepared remarks. "For Florida, this perception has become reality in large part, and we want to address those concerns."

Crist called for the replacement of the machines because of last year's District 13 congressional race in

Sarasota County, where touch-screen machines showed 18,000 ballots without a selection in the race. That high rate of "undervotes" - significantly higher than surrounding counties in the district - as well as testimony from voters who said the machines malfunctioned, led Democrat Christine Jennings to challenge her 369-vote loss to Republican Vern Buchanan.

The state Senate last week passed a bill (SB 960) that calls for the replacement of the touch-screen machines and moves Florida's presidential primary to Jan. 29. The bill is now awaiting action by the House.

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Florida
Federal funds pave way to voting paper trail (Miami Herald; Julie Hodgkins referenced)

Florida can use federal money to pay for a switch to paper ballots, easing the way for lawmakers to scrap touch screens in 15 counties, including Miami-Dade and Broward.

Miami Herald
May 1, 2007
BY LESLEY CLARK AND GARY FINEOUT
lclark@MiamiHerald.com

WASHINGTON -- U.S. election officials gave Florida the go-ahead Tuesday to use federal money to pay for voting machines with a paper trail, easing the way for the state Legislature to scrap touch-screen machines in Miami-Dade, Broward and 13 other counties.

The agreement capped a two-hour meeting before the U.S. Election Assistance Commission, which rejected the bid to tap one federal pot, then told the state how to get the $28 million it asked for anyway: Use the federal funds to reimburse itself for the millions Florida spent on new voting machines after the "hanging chads and butterfly ballots" debacle of the 2000 presidential election.

The initial rejection prompted an impassioned plea from Secretary of State Kurt Browning, who told the commission that without federal money, the state would be unable to move to paper ballots in time for the 2008 presidential election.

"Florida has been through the wringer and back," Browning, a former Pasco County elections supervisor, told the commission when it appeared the federal dollars would not be available. ``Florida wants to move on . . . Florida is election-weary."

Browning said that although he believes the electronic ATM-style machines are accurate, ``there's a perception out there that you can't trust touch-screen voting machines."

"For Florida, this perception has become reality in large part, and we want to address those concerns," he said. He said most counties have reported no problems with touch-screen voting, but he added, "let's not talk about Sarasota" -- where 18,000 ballots recorded no vote in last year's congressional race and a House task force meets today to decide whether to investigate.

Commission members said they were reluctant to let the state use unspent federal dollars earmarked for purchasing voting machines under the federal Help America Vote Act, or HAVA, because the federal government had already picked up part of the tab when the state scrapped its punch-card machines.

But Julie Hodgkins, general counsel for the commission, said Florida and its counties never reimbursed themselves for the full costs when they scrapped punch-card voting machines in the wake of the 2000 presidential election -- before HAVA was even implemented. She said that money can be used for the new machines.

The decision by federal authorities should remove one of the final obstacles to Florida removing the touch-screen machines in the 15 counties that use them, and replacing them with optical-scan machines that rely on paper ballots filled out by voters.

Gov. Charlie Crist, who asked the Legislature to switch the state to paper ballots, had initially planned to use state money for the new machines, but his plan was rejected by House Republicans.

Sen. Lee Constantine, an Altamonte Springs Republican and sponsor of the bill that mandates new voting machines, said Tuesday's decision should clear the way for lawmakers to pass the voting bill by the time the session ends Friday.

"Now they have no excuses," Constantine said. ``We always felt very strongly we could use the [federal] money."

Rep. David Rivera, one of the top Republicans in the House, said the main problem that remains is that the bill the Senate has already passed authorizing the new machines is included in a 73-page bill that contains dozens of other election changes. The bill, for example, moves Florida's presidential primary up to Jan. 29.

Browning told the commission that there is some opposition among county elections supervisors who are concerned about getting new machines online in time for the 2008 presidential election. Crist wants paper ballots in use for primary elections that fall, Browning said.

"I won't say they're against it," Browning told the commission. ``They're hopeful to have more time to do it."

Browning told the commission he took the job with one primary goal: ``to make elections in Florida a nonevent."

"We in Florida have to get away from defending touch-screen voting machines and get back to running elections," he said.

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Florida
Money For Paper Ballots OK'd (Tampa Tribune; Julie Hodgkins referenced; Florida State Senate's lead proponent of Crist initiative says Browning didn't need EAC approval)

By BILLY HOUSE and CATHERINE DOLINSKI
The Tampa Tribune
Published: May 2, 2007

WASHINGTON - Florida received a green light Tuesday to use $28 million in federal money to pay for Gov. Charlie Crist's plan to switch all state counties to paper ballots.

"I'm satisfied," a relieved Secretary of State Kurt Browning said Tuesday after pleading his case to the U.S. Election Assistance Commission in Washington, D.C.

But while agreeing that it was good news politically, the Florida Senate's lead proponent of the Crist plan maintained that the spending decision always has rested with the state.

With lawmakers in Tallahassee racing toward Friday's close of the legislative session, questions have loomed for weeks as to whether the state could legally use federal "Help America Vote Act" money to pay for Crist's initiative.

Crist has sought to require a paper trail in all counties after 18,000 undervotes were recorded in Sarasota County last fall, prompting legal challenges in the close result of the District 13 congressional race.

The governor hopes to have touch-screen machines purchased by counties replaced with optical scanners to read paper ballots before the 2008 presidential election.

Early on, however, funding concerns threatened support for the proposal among House leaders, who balked at the prospect of spending state money to replace counties' electronic touch-screen machines. The only funding source lawmakers could agree on was the state's federal voting-act money.

The state has been sitting on more than $91 million of the federal election-reform money. The problem is, most of it comes tightly attached to strings that limit its use to specific purposes.

Browning has been among those who have raised questions about whether Florida legally can apply those federal funds to Crist's paper-trail plan. With the clock ticking toward Friday, Browning went to Washington to get an answer from the commission that oversees those funds.

That irked Lee Constantine, the Florida Senate's lead proponent of Crist's initiative.

The U.S. Election Assistance Commission, he said, "makes recommendations, but it's not their decision. I wish the secretary of state had understood that it's in his purview to decide it."

What Browning got initially, after pleading the state's case during the commission's hearing, was a roundabout answer from the commission's general counsel that seemed to suggest the state's request to use the money was being rejected.

"Florida is weary. We are elections weary," responded Browning. "We want to do the right thing," which he said would be to use federal voting act money "to do exactly what the state is requesting."

"I guess I'm just a little disappointed," he went on to tell the commission. "I was hoping to come to Washington today to have consensus so that we could tell our Legislature to move ahead and fund this improvement ..."

The commission's counsel, Julie Thompson-Hodgkins, then went on to say that she thought a couple of accounting maneuvers could, in fact, provide Florida the federal voting money Crist seeks.

The state, she noted, can be reimbursed $12 million in Help America Vote Act Money for voting machine purchases made in 2001 and 2002, for which Florida has not been reimbursed. Then the state could pay for the balance of the governor's plan with other federal voting money.

The bottom line: The federal election-assistance funds can be used to pay for all of Crist's plan.

Now, it's up to the Legislature to approve the plan. Constantine said he hoped the federal panel's endorsement would help clear the way - even though he thought it was an unnecessary step.

"I'm just glad that now there is no one who might not like paper trails that can use this as an excuse."

Reporter Catherine Dolinski can be reached at (850) 222-8382 or cdolinski@tampatrib.com. Reporter Billy House can be reached at bhouse@tampatrib.com or (202) 662-7673.

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Texas
House approves bill requiring state to verify voters' citizenship

Legislature: Applications would require info on birth or naturalization

The Dallas Morning News
Wednesday, May 2, 2007
By KAREN BROOKS
kmbrooks@dallasnews.com

AUSTIN - The state would set up a system to check the citizenship of registered voters under legislation endorsed by the House late Tuesday.

A bill by Rep. Phil King, R-Weatherford, charges the secretary of state with verifying, through database checks, the citizenship of anyone who registers to vote, starting in September.

Applications would also require registrants to list their date and place of birth, or the date and place of naturalization. If an applicant doesn't show up in the state's cross-reference with various databases identifying citizens, that person would be required to go to his local elections office and swear to his citizenship.

Voters who are already registered would be exempt from the new requirements until the next time they register.

The House approved the bill, 87-59, and the legislation is expected to be passed today and sent to the Senate.

Mr. King and other authors originally wanted to require people to show proof of citizenship when they register to vote, but concerns that that would virtually shut down voter registration drives - such as those at colleges and churches - caused them to shift the burden to the state, Mr. King said.

"This is about protecting voting rights," Mr. King said. "This is about making sure your vote, your brother's vote, your sister's vote, and your constituents' vote is not canceled out by the vote of a noncitizen."

Opponents say the legislation is actually about canceling out minorities' votes, because any burden on voting registration - including the purging that would occur if the databases are wrong or the system is imperfect - disproportionately affects the poor and minorities.

They argued that the state has no reciprocity agreements with other states' birth-certificate and naturalization databases and that trying to cross-check millions of voters against numerous lists like Social Security and driver's license records would produce too many errors.

Attempts by House Democrats to set up a database system first, allow voters to register and vote on Election Day, and increase the penalties for voting illegally all failed.

"You will have hundreds of thousands of people who will be unable to be registered and verified as citizens," said Rep. Rafael Anchia, D-Dallas, who is leading the fight against additional voting requirements.

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Texas
Voter ID bill hinges on ailing senator

Democrats vow to block the measure, but need Gallegos

By LISA SANDBERG and JANET ELLIOTT
Houston Chronicle

Austin Bureau
May 2, 2007

AUSTIN – A Senate committee has passed the controversial, partisan-charged voter identification bill, but Democrats are vowing to do whatever it takes to block it.

Their success will depend on whether Sen. Mario Gallegos Jr., D-Houston, who has missed most of the session recuperating from a liver transplant, can make it back to work for the vote.

All 11 Senate Democrats are needed to block the bill from coming to the floor for debate, where the Republican majority will easily pass it.

"I'll be here," Gallegos promised Tuesday from the Senate floor, where he put in a full day against the advice of his doctor.

Republican Lt. Gov. David Dewhurst promised to give Gallegos 24-hours notice before the bill hits the Senate floor – but only once, and that came Tuesday.

There won't be another notification should the bill be delayed today.

Senate Democrats say that if House Bill 218 is introduced on the floor while Gallegos is in Houston undergoing medical treatment, they'll filibuster until he can make it back to Austin.

"We've got 10 who can filibuster until Mario gets back. Understand that somebody is going to filibuster," said Sen. Leticia Van de Putte, D-San Antonio.

"I think we can talk for 24 hours," said Sen. Rodney Ellis, D-Houston.

So a showdown over voter identification is guaranteed.

House bill advances

Also Tuesday, a second hotly contested voter bill, this one involving registration, was tentatively approved by the House on an 87-59 vote.

House Bill 626, sponsored by Rep. Phil King, R-Weatherford, would require state election officials to verify citizenship of every applicant for a new voter registration card.

Applicants would have to provide their city, county and state of birth, which the Secretary of State's office would verify. Naturalized citizens would have to list the place and date of their naturalization oath. Critics of the bill said they didn't believe state officials had the capability to conduct the checks.

The voter ID bill would require Texans to show photo identification or two forms of nonphotographic identification before being allowed to cast ballots. Now citizens who bring their voter registration cards to the polls don't have to show a photo ID.

Republicans say the legislation is necessary to combat voter fraud. Democrats say the bill targets a rare form of fraud and is actually designed to suppress turnout by black and Hispanic voters.

"What this is is an orchestrated and national movement to suppress elderly and minority votes," Van De Putte said, adding that in Texas, the Secretary of State's office has no reports of people casting illegal ballots.

"Undocumented immigrants come here to work. Not to screw up elections," Van de Putte added.

Dewhurst called the voter ID bill, authored by Rep. Betty Brown, R-Terrell, an "overwhelmingly popular concept" and predicted on Tuesday that he had the votes to pass it on the Senate floor.

"Gee, isn't this revolutionary?" Dewhurst said. "Texas law requires that someone be a U.S. citizen and have lived here in Texas a minimum amount of time.

"How hard is it?" Dewhurst asked. "We require identification to get on an airplane, to check out a library book, if you want to buy Sudafed for your cold. Most people wouldn't think twice about providing some identification to prove they are who they say they are when they vote."

The version of HB 218 passed Monday night by the Senate's Committee on State Affairs eliminated an exemption from the photo ID requirement for voters over 80. The vote was along party lines, 6-3.

"I'm surprised anyone would be opposed to it," said Sen. Troy Fraser, R-Horseshoe Bay, who is carrying the bill in the Senate.

[redacted]

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Texas
ID rule will bolster integrity of elections (commentary)

Commentary
Austin American-Statesman
Tom Aldred and Brent Connett
Texas Conservative Coalition Research Institute
Tuesday, May 01, 2007

The main argument against the voter identification and citizenship verification proposals in the Legislature runs as follows: requiring a person to prove his identity and citizenship constitutes a poll tax that will suppress the votes of the poor, elderly and minorities.

Instead, voter identification is about integrity of the election system and improving voter confidence in the outcome of our elections.

The office of the secretary of state reports that there are 12.5 million registered voters in Texas. According to the Department of Public Safety, there are more than 14 million valid Texas driver's licenses and almost another 4 million valid Texas ID cards issued to Texans over age 18. There are 5.5 million more government-issued identification cards possessed by the voting age population than there are registered voters.

A majority of the elderly hold valid Texas driver's license: 73 percent of the age seventy-nine and 63 percent of 85-and-older population. Most telling is that 93 percent of elderly voters who voted in 2006 in Harris County – the state's most populous county – hold a valid Texas driver's license. Even more hold a Texas ID card, utility bill, hunting license, library card – all forms of acceptable identification in HB 218, which passed the Texas House.

Opponents' concern over disenfranchising the elderly is especially dubious since one bill passed by the House exempts people older than 80 from the identification requirement. If a person does not possess and is unable to procure identification, that person can vote by absentee ballot, a process unchanged by the voter identification bill. The voter identification bill also provides for a free ID card to any registered voter who doesn't already have one and can't afford one.

Vote fraud has been well documented. In 2006, the attorney general investigated 59 cases and noted that the highest concentration of voter fraud is in the vote-by-mail process though there have been three instances of alleged illegal voting, which may include circumstances preventable by a voter photo ID law.

Harris County has cancelled 3,742 registered voters for non-citizenship; 683 of those non-citizenship cancellations have occurred from 2000 to the present. No one knows the magnitude of this problem because there has never been a thorough investigation done by a state or county authority. The secretary of state, the state's chief elections officer, admits that there is no verification of the information provided by voter registration applicants. The voter registration process is so riddled with error, fraud and potential manipulation that the U.S. State Department will not accept a voter registration card as proof of citizenship when a person applies for a passport.

Critics dismiss this evidence, contending vote fraud is negligible and doesn't justify ID requirements. That is inherently contradictory. Just one person denied the right to vote on the basis of race is enough to launch federal action under the Voting Rights Act. But even though vote fraud cancels the legitimately cast votes of minorities, elderly and the poor, fraud is treated almost casually, if not indifferently. Vote fraud is not the same as voter intimidation, but it leads to the same result: disenfranchisement.

Lost on critics is that the illegal immigrant population in Texas is estimated to be over 1.6 million. With so many illegal immigrants residing here, and document fraud and identity theft increasingly linked to illegal immigration, their potential effect on election outcomes is too serious to ignore.

The bipartisan Commission on Federal Election Reform led by President Carter and former Secretary of State James Baker issued 87 recommendations for ensuring equal access to elections and election integrity. The commission recommended that states verify citizenship before registering voters and require photo identification at polling places.

Voter identification and citizenship verification fill a gaping loophole in election law. For the first time, there will be a mechanism to prevent, investigate and prosecute voter impersonation at the polls and in the process protect citizens' right to vote as guaranteed by the Constitutions of the United States and the State of Texas.

Aldred and Connett are policy analysts with the Texas Conservative Coalition Research Institute, which based in Austin.

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Juliet E. Hodgkins/EAC/GOV
05/02/2007 05:16 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Rosemary E. Rodriguez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C.
cc Elieen L. Collver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, "Fabre, Stacie" [redacted], Stephanie
bcc
Subject Feinstein and Durbin letter

Commissioners and Tom,

There are several questions in the Feinstein and Durbin letter that I need your assistance responding to. Particularly, I need your responses as to question 1 for both the Voter ID study (page 4 -- numbered at the top) and Voting Fraud and Intimidation (page 5 -- numbered at the top). While these two questions actually say the same exact thing, I believe that the question under Voter ID was intended to refer to the Voter ID study and not the Voting Fraud and Voter Intimidation Study.
In addition, please look at questions 5 and 9 under Voting Fraud and Voter Intimidation. Each of these questions require information and documents that you may have. Last, if you have any input on the response to Question 10 under Voting Fraud and Voter Intimidation, please let me know.

I am currently working on the response and anticipate working on it tomorrow and Friday. I would appreciate any information that you may have.

Feinstein and Durbin letter.pdf

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

United States Senate
WASHINGTON, DC 20510

April 12, 2007

The Honorable Donetta Davidson
Chairman
U.S. Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, DC 20005

Dear Commissioner Davidson:

We are writing to seek a response to very troubling news reports that included allegations that the Commission may have altered or delayed release of two taxpayer-funded studies of election issues for political purposes.

While the Commission is within its rights to decide what guidance it issues to election officials, it is critical that its actions are not perceived as politically motivated and it is imperative that you provide full documentation about the Commission's proceedings on these matters.

On Wednesday, the *New York Times* reported that a bipartisan team of election law experts hired by the Commission to research voter fraud in federal elections found that there was little such fraud around the nation, but the Commission revised the report to say that the pervasiveness of voter fraud was still open to debate.

On Monday, *Roll Call* reported that the Commission two weeks ago rejected the findings of a report, prepared as part of a $560,000 contract with Rutgers University's Eagleton Institute and Ohio State University's Moritz College of Law. That report found that voter identification laws may reduce election turnout, especially by minorities.

It is imperative that the Commission's actions and deliberations are unbiased, free from political influence and transparent. While the Commission does not have to agree with the experts who perform its research, it should make the research available unfettered and unfiltered.

Attached are a series of questions, we would like the Commission to address. We look forward to your timely response.

Sincerely,

Dianne Feinstein
Dianne Feinstein
Chairman
Committee on Rules
and Administration

Dick Durbin
Richard J. Durbin
Chairman
Subcommittee on Financial
Services and General
Government
Committee on Appropriations

We request information and documentation from the Commission that answer the following questions:

COMMISSION'S OVERSIGHT ON EAGLETON CONTRACT TO PERFORM A STUDY ON VOTER IDENTIFICATION

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Would you please provide a copy of the approved Request For Proposals, as well as any contract modifications that were agreed to between the Commission and Eagleton Institute and subcontractors?
3. Can you provide the names and qualifications of Election Assistance Commission staff that worked on the Eagleton Institute project?
4. Please indicate how many project meetings occurred during the term of the Eagleton contract, including in-person meetings, conference calls regarding the status of the report, and any meeting where Commissioners were present for at least part of the meeting. Please provide copies of any minutes from those meetings.
5. Please identify the names and affiliations of members of the Peer Review group or groups that examined the Eagleton Institute drafts. Please also indicate the dates upon which any such review of the Eagleton research was conducted, and the specific concerns or complaints that were raised by members of the Peer Review group as to either the analysis or statistical methodology, if any. Please provide copies of any minutes from those meetings.
6. If certain members of the Peer Review groups had concerns with the data or methodology of the Eagleton study, was that information communicated to Eagleton, and were any changes made to the study based on Peer Review group concerns with methodology or data?
7. Who were the individuals (and what were their academic qualifications) that advised the Commission that the data, methodology, or the results of the Eagleton Contract were so flawed that the Commission should reject the report? At what point did the Commission receive input from those individuals?

8. The Commission previewed its research on the Eagleton Institute's study on Provisional Voting at its May 2006 Advisory Board meetings—why was the Voter Identification Draft Study not discussed at that time? What is the status of the Provisional Voting report?
9. In rejecting the Eagleton report, the Commission indicated concerns that there was only one year's worth of data. Given that this was the first year that Commission had studied the results, isn't "one year" what was originally contemplated in the Eagleton contract? Isn't the reason for having a major research institute conduct this study is so they can draw initial assessments from that data—even though that data can be augmented in future years? Because of the rejected report, will the Commission start anew for research in the 2008 elections?
10. What was the final, total cost of the Eagleton contract, and what was produced or released by that Commission as a result of that contract?

COMMISSION'S OVERSIGHT OVER VOTER FRAUD/INTIMIDATION STUDY

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Given the bipartisan nature of the Working Group that guided the Voter Fraud/Intimidation report, and the bipartisan nature of the contracted experts who uniformly support the results of this report, what concerns lead the Commission to determine the report should not be released?
3. If there were points in the report that the Commission objected to, were there attempts to work with the contractors to deal with specific concerns? If there were such attempts, please describe them.

4. Who drafted the Commission summary (released in December, 2006) of the Voter Fraud/Intimidation report, and what were their credentials and involvement in the original research process? Were there instructions or guidance given from Commissioners or senior staff as to what portions of the research should be emphasized? Who at the Commission reviewed the summarized report? Since the contracted experts are referred to in the Commission's released report, were the contractors allowed a chance to review or edit that Commission's final report that was released in December, 2006?
5. Please provide copies of any electronic or written communications between Commission employees that relate to the editing of the Voter Fraud/Intimidation report.
6. Please explain what Mr. Job Serebrov was referring to in his email referenced in the *New York Times* article of April 11, 2007. Please provide any documents in the Commission's possession where employees or contracted experts discussed pressure, political sensitivities, or the failure of the Commission to adopt the Voter Fraud/Intimidation report from March 1, 2006 to present.
7. While we realize that the Commission voted to release its summary report in December 2006, was there a public vote taken to reject the Draft Voter Fraud/Intimidation report? Such a monumental decision to reject the contract experts' work is a policy decision, and one that should be done in public. When was the decision made to reject the original report, and what notice was provided to the public that the Commission would reject that report?
8. Prior to the Draft Voter Fraud/Intimidation report's release, had other organizations requested a copy of that original report? Please include copies of your responses to those organizations, if any.
9. Had any States requested that the Commission or staff provide guidance related to voter identification requirements in the Help America Vote Act, or identification requirements generally? Please provide those requests, and any responses from the Commission.
10. Please indicate what steps the Commission is taking to ensure that political considerations do not impact the agency's research and that decisions are handled in a public and transparent manner.

Bryan Whitener/EAC/GOV
05/03/2007 10:57 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (5-3-07, Thurs)

Commissioners:

The following items are in the news.

##########

National
- Rep. Lofgren Issues Statement on Election Assistance Commission Report Process
- Send Rep. Lofgren a "Free Tova Wang" T-Shirt (Rick Hasen)
- Controversial USA Delivered "Voter Fraud" Indictments Right on Time
- Organizations start campaign against Real ID

National / Florida
- GAO Will Examine Florida Ballot Fight
- House Admin. Elections Subcmte. Meeting Today Wed, 5-2-07: Contested Florida-13th Congressional Election
- Millions Of Dollars Found For New Voting Equipment (EAC & Florida)
- 'Daily Voting News' For May 2, 2007 (Gideon;...state only reimbursed the counties with 20% of the funds they had coming when they bought new voting systems.)

Missouri
- McClatchy Newspapers: 'Missouri Was Ground Zero' For GOP 'Voter Fraud' Scam, Thor Hearne and ACVR at Center of Scheme (EAC & DeGregorio mentioned)

##########

National
Rep. Lofgren Issues Statement on Election Assistance Commission Report Process

Questions Report Procedures

Press Release
May 1, 2007
Media Contact: Pedro Ribeiro
202.225.3072
Pedro.Ribeiro@mail.house.gov

Washington, DC - Rep. Zoe Lofgren (D-San Jose), Chairwoman of the House Administration's Subcommittee on Elections, today issued the following statement in response to continuing allegations that the Elections Assistance Commission (EAC) has politicized their report creation process.

"I'm troubled by a recent letter from Tova Wang, an independent researcher hired by the EAC, which claims the EAC issued a gag order barring her from speaking about her research. This appears to be yet another step in a calculated and deliberate effort to block, edit, hide, and otherwise bury reports whose findings challenge certain political assertions.

Partisan politics have absolutely no place in the administration of America's elections. By interjecting their political agenda into the EAC, the administration is subverting the very cornerstone of American democracy, that every vote is fairly counted. Once again we are faced with a group of Republican political appointees running amuck in the federal government. It is quite clear that Bush appointees continue to place partisan politics above the work of the American people."

# # #

Congresswoman Zoe Lofgren is serving her seventh term in Congress representing most of the City of San Jose and Santa Clara County. She serves as Chair of the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. She also Chairs the House Administration Subcommittee on Elections and serves on the House Homeland Security Committee. Congresswoman Lofgren is Chair of the California Democratic Congressional Delegation consisting of 34 Democratic members of the U.S. House of Representatives from California.

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##########

National
Send Rep. Lofgren a "Free Tova Wang" T-Shirt (Rick Hasen)

Rick Hasen
Election Law Blog
May 2, 2007

Following up on this post, Rep. Lofgren, Chair of the House Administration's Subcommittee on Elections, has issued this statement:
I'm troubled by a recent letter from Tova Wang, an independent researcher hired by the EAC, which claims the EAC issued a gag order barring her from speaking about her research. This appears to be yet another step in a calculated and deliberate effort to block, edit, hide, and otherwise bury reports whose findings challenge certain political assertions.
Partisan politics have absolutely no place in the administration of America's elections. By interjecting their political agenda into the EAC, the administration is subverting the very cornerstone of American democracy, that every vote is fairly counted. Once again we are faced with a group of Republican political appointees running amuck in the federal government. It is quite clear that Bush appointees continue to place partisan politics above the work of the American people.

Surprisingly, despite the call by EAC Commissioner Rodriguez to respond to Wang's request, only silence so far from the EAC.

##########

National
Controversial USA Delivered "Voter Fraud" Indictments Right on Time

TPMmuckraker
By Paul Kiel
May 1, 2007

The Justice Department has a longstanding policy regarding the prosecution of election law or voter fraud cases: the closer to the election it gets, the more cautious prosecutors should be about bringing indictments. The reason is simple. Bringing an indictment close to the election can intimidate minority voters, affect voter turnout and potentially even influence the result of the election.

But Bradley Schlozman -- the former U.S. Attorney for Kansas City and controversial deputy head at the Civil Rights Division -- broke with the policy. Not only that, but there's evidence that he rushed four indictments to land just before last November's election.

Indeed, timing aside, even Schlozman's decision to pursue the cases at all is questionable in light of established Justice Department practice. Although trumpeted as cases of voter fraud, the cases alleged only registration fraud, and there's no evidence that those registrations were intended to result in actual fraudulent votes. For that reason, other U.S. attorneys have passed on pursuing similar prosecutions. But Schlozman, who'd worked to push voter I.D. laws while in the Civil Rights Division, leapt at the opportunity.

The more you learn about Schlozman's decision to indict four voter registration recruiters for the Association of Community Organizations for Reform Now (ACORN) five days before last year's election -- Missouri's Jim Talent was battling Claire McCaskill in one of the closest Senate races in the country --, the worse it looks.

News coverage of the indictments tended to buttress the notion that liberal groups like ACORN were conspiring to steal the election. The indictments were covered by Fox News (where a Kansas City election official was quoted as saying that it was "the worst case of registration abuse in the last quarter century"), as well as the AP, CNN, and other nationwide outlets. Schlozman announced in a statement that "This national investigation is very much ongoing."

It had been the longstanding practice of the Justice Department not to bring such indictments so close before an election. That's according to Joe Rich, the former head of the Justice Department's Civil Rights Section, and a Justice Department manual written by Craig Donsanto, head of the Election Crimes Branch at Justice, which advised that "Federal prosecutors and investigators should be extremely careful to not conduct overt investigations during the pre-election period or while the election is underway."

Even Alberto Gonzales himself said just two weeks ago that "We have guidance about that, doing those kind of investigations near an election," to be "sensitive about the effect it has on particularly minority participation."

But if Schozman was trying to be sensitive, he didn't show it. In addition to issuing the statement that the "national investigation" into ACORN's registration of mostly poor, minority voters was "very much ongoing," Schlozman also announced the next day that his office would be monitoring the election for fraud. An assistant U.S. attorney would be on duty all day to "ensure public confidence in the integrity of the electoral process."

And there is evidence that the indictments were rushed to come down before Election Day.

According to Elyshya Miller, ACORN's head organizer for Kansas City, ACORN identified certain forms as potentially fraudulent and turned them over to prosecutors in late October; four organizers were responsible. A week later, all four organizers were indicted by a grand jury.

But in their evident haste to indict, the prosecutors made a mistake -- they indicted the wrong person. Three weeks after the election, Schlozman's office dropped the charges against one of the defendants, Stephanie Davis, admitting that her identity was used without her permission. It was not until January of this year that Schlozman's office finally indicted one Caren Davis, who was apparently the person they were really after. Caren Davis' lawyer Dana Altieri told me that Davis is currently undergoing a psychiatric evaluation to determine whether she is competent to stand trial.

But let's look at the indicted crimes themselves. The four defendants were accused of forging the registration forms for a grand total of six voters (Caren Davis was responsible for three). In some cases, the defendants simply made people up; others forged the registrations for real people.

As *The New York Times* has noted, "the forms could likely never be used in voting." Other U.S. attorneys had declined to pursue similar cases -- in fact, despite Schlozman's "national investigation," these were the only charges filed against ACORN organizers nationwide in 2006.

Two of the fired U.S. attorneys provide an answer why.

The former U.S. Attorney for Little Rock Bud Cummins told Salon that in cases like this, the fraud is perpetrated *upon* ACORN, not by them. The organizers forge registrations in order to justify their $8.00/hour wages. Elyshya Miller, the organizer from ACORN, explained to me that the group frequently hires people who are in "desperate situations," who "really need something at the time."

Schlozman's cases, the *Times* reported, were "similar to one that [former U.S. Attorney for New Mexico David] Iglesias had declined to prosecute, saying he saw no intent to influence the outcome of an election."

Two of the four defendants have pled guilty -- neither have been sentenced.

Schlozman's office has sought to justify the timing of the indictments by saying that they were reviewed by Justice Department officials Washington. If true, that would raise even more questions: who there decided to depart from department policy and approve the indictments? Why?

Will Thomas contributed reporting to this piece

##########

National
Organizations start campaign against Real ID

Federal Computer Week
BY Alice Lipowicz
Published on May 2, 2007

Civil liberties and consumer organizations have started a national campaign against the Real ID Act regulations issued by the Homeland Security Department because they believe the new identification system will have serious negative effects on privacy and civil rights.

The campaign was announced May 1 by 43 organizations, and seven groups joined today, bringing the total of groups involved to 50. The purpose of the effort is "to stop the nation's first national ID system," the coalition said.

The organizations, led by the American Civil Liberties Union, say they are worried about increased threat of counterfeiting and identity theft due to lack of security to protect against unauthorized access to the information on the ID cards.

They also object to the expense of the cards and to individuals' loss of privacy and control of their personal information if the cards are breached or misused. Some civil libertarians suggest the negative consequences of a national identification card system could be extreme – such as allowing unprecedented government tracking of individuals and possibly hindering authorizations for jobs, medical care or housing – if the information is stolen or abused.

"Under the act, states and federal government would share access to a vast national database that could include images of birth certificates, marriage licenses, divorce papers, court ordered separations, medical records and detailed information on the name, date of birth, race, religion, ethnicity, gender, address, telephone, e-mail address and Social Security number for more than 240 million [people], with no requirements or controls on how this database might be used," the coalition said.

Congress passed the Real ID Act of 2005 on the recommendation of the 9/11 Commission to standardize state-issued drivers' licenses nationwide to curb abuses and prevent illegal aliens from obtaining ID cards by using false information. Several of the 2001 terrorists had valid U.S. driver's licenses.

However, several state legislatures have rejected the Real ID Act requirements. To date, Arkansas, Idaho, Maine, Montana and Washington state have voted not to participate in implementing the Real ID Act because of its high costs and privacy concerns. State governments will have to spend about $11 billion on Real ID over five years, according to a September 2006 study by the National Conference on State Legislatures, the National Governors Association and the American Association of Motor Vehicle Administrators.

The civil liberties groups also are concerned about increased costs for obtaining a license or state-issued ID card, and possibly "arbitrary and capricious" decisions at state agencies that may hinder persons from getting an ID card.

Public comments are due by May 8 on regulations to implement the Real ID Act .

Alice Lipowicz writes for Washington Technology, an 1105 Government Information Group publication.

##########

National / Florida
GAO Will Examine Florida Ballot Fight

Roll Call
May 3, 2007
By Matthew Murray
Roll Call Staff

A House task force agreed Wednesday to enlist an in-house auditor to explore whether faulty voting equipment left thousands of votes missing last year in Florida's still-disputed 13th district election.

The House Administration elections task force, chaired by Rep. Charlie Gonzalez (D-Texas), unanimously voted at its first public meeting Tuesday to turn the matter, for now, over to the Government Accountability Office, a nonpartisan Congressional investigatory agency.

The GAO will attempt to determine the cause of 18,000 possible "undervotes" in November in the House contest between bank executive Christine Jennings (D) and now-Rep. Vern Buchanan (R) in the race to replace Rep. Katherine Harris (R), who stepped aside to pursue a Senate bid.

Although Florida auditors certified that the Jennings-Buchanan contest was decided by just 369 votes, Jennings continues to insist that malfunctioning voting equipment led to the missing votes, robbing her of victory.

The contested election, initially expected to move relatively quickly through the Florida court system, has ground to a halt. With roughly one-quarter of the 110th Congress already done, Democrats at Tuesday's meeting said that time is of the essence.

"I think we need to put this to rest," said Rep. Zoe Lofgren (D-Calif.).

The GAO report is expected to take about 45 days to complete, officials said. While House Democratic leaders agreed to seat Buchanan at the beginning of the year, they have not ruled out the possibility of removing him from Congress and seating Jennings if subsequent evidence suggests that she actually won the election.

Lofgren, Gonzalez and freshman Rep. Kevin McCarthy (R-Calif.), a former aide to retired Ways and Means Chairman Bill Thomas (R-Calif.), are the three Members on the panel's elections task force.

Despite his vote to send the matter to the GAO, McCarthy and other Republicans have been critical of perceived Democratic meddling ahead of a final decision by Florida courts. Many GOP critics say little evidence in the ongoing case conclusively suggests that the voting machines malfunctioned.

"Do we go through a [Congressional] investigation, which has its own ramifications ... [with] no evidence before us that says there is a problem with [ongoing court] investigations?" McCarthy asked at Wednesday's hearing. "I would argue that there [already] has been an investigation ... [Florida authorities] have looked at the machines."

"Are we doing a disservice to Congressman Buchanan?" McCarthy continued. "I think its time to move on."

But for Jennings, who continues to raise money to finance her ongoing court battle, Wednesday's decision by the task force means that her 2006 House bid lives another day.

"I am thrilled that the investigation will move forward. This is about more than who won or lost an individual election – it's about protecting the right to vote," Jennings said in a statement. "The 18,000 people in Sarasota who lost that right, and the millions of Americans nationwide who use electronic voting machines, deserve answers."

##########

National / Florida
House Admin. Elections Subcmte. Meeting Today Wed, 5-2-07: Contested Florida-13th Congressional Election

Roll Call
May 1, 2007
Administration
Meeting

Ad Hoc Election Panel Subcommittee meeting on issues pertaining to the contested election in the 13th Congressional District of Florida. Democratic candidate Christine Jennings, who lost the election to Rep. Vern Buchanan (R-Fla.) by 369 votes, is contesting the election "claiming that 18,000 votes were lost due to a computer glitch in the touchscreen electronic voting system." Room 1310, Longworth House Office Building May 2, 2007 10:30 a.m. Contact: (202) 225-2061

##########

National / Florida
Millions Of Dollars Found For New Voting Equipment (EAC & Florida)

Touch Screen Voting Machine Bill Comes To A Head

CBS News 4
May 2, 2007
Michele Gillen
Reporting

(CBS4) TALLAHASSEE It's not everyday that you find millions of dollars, but that's exactly what happened Wednesday with millions of dollars to help our state's voting system.

The US Election Assistance Commission will allow Florida to use federal funds to replace the state's touch-screen voting machines with a verifiable paper-trail system. Until now, there was concern that the state would have to dish out all the money to revamp its voting system.

The Florida Legislature is on the verge of passing an elections bill that calls for the use of nearly $28 million dollars in federal funds to replace touch-screen voting machines used in 15 counties. But until yesterday, state lawmakers and Florida's Secretary of State did not know for sure whether they could rely on federal money from the Help America Vote Act. It appears that the state had federal money all along that was supposed to pay for a fix to the 2000 hanging chad debacle.

The Election Assistance Commission said during a public hearing in Washington that it would permit the use of federal funds.

Sandy Wayland, president of the Miami-Dade Election reform coalition is aghast over where federal dollars that are now allegedly being offered to pay for new optical scan machines are coming from. She says counties have been trying to collect these very dollars for years. They were earmarked to reimburse counties for the cost of getting rid of paper ballots replacing them with electronic voting machines.

"It says that there's been a gross mismanagement of funds and perhaps a little bit of secrecy," said Wayland. "What they were planning on doing with this money back in the day, I have no idea. The county certainly could have used it."

Counties such as Miami-Dade are still paying their debt for installing new voting equipment the first time around.

Even though Florida is one step closer to getting the optical scan machines, the question still remains as to what will be done with the instructions, which are only written in English, creating problems in multiethnic communities such as Miami-Dade.

##########

National / Florida
'Daily Voting News' For May 2, 2007 (Gideon;...state only reimbursed the counties with 20% of the funds they had coming when they bought new voting systems.)

John Gideon
VotersUnite.org
Brad Blog
May 2, 2007

[1]While the voters in Florida have received good news from the Election Assistance Commission (EAC) which has told them they can spend HAVA funds [3] for new optical-scan machines to replace their DRE machines, all is not golden. The interplay with the EAC has revealed that the state only reimbursed the counties with 20% of the funds they had coming when they bought new voting systems. Where did the rest of the money go and why are the counties still making payments for something that should have been paid for? Also, the state House of Representatives has taken the just passed Senate bill that would have given the voters optical-scan systems and they have begun a 'slice and dice' job on the bill. The House just

needs to pass the Senate bill [4] and fund the change and not play political games that will only harm the voters, again. Meanwhile a committee in the US House of Representatives has voted on party lines to investigate the FL-13 [5] congressional election and what happened to 18,000 votes.

##########

Missouri
McClatchy Newspapers: 'Missouri Was Ground Zero' For GOP 'Voter Fraud' Scam, Thor Hearne and ACVR at Center of Scheme (EAC & DeGregorio mentioned)

National Mainstream Media FINALLY Picks up on, Exposes the 'Non-Partisan' 'American Center for Voting Rights' Fraud...

Brad Friedman
Brad Blog
May 2, 2007

After more than two years of banging the drum here at The BRAD BLOG [1], it looks as if the national MSM have *finally* picked up on the fraud perpetrated by Missouri's White House operative Mark F. "Thor" Hearne and his high-level, democracy-hating GOP scammer pals in Missouri, at the Department of Justice, and in the White House.

In a McClatchy article [2] just out today, reporter Greg Gordon correctly identifies Missouri as "Ground Zero" in the Republican attempt to establish phony claims of Democratic "voter fraud" in order to institute new restrictions at the polls as part of an insidious ploy to Democratic-leaning voters from being able to cast their vote.

Gordon reports on a number of issues out of Missouri that we've covered here over the years, including; the unsubstantiated claims of "voter registration fraud" against ACORN filed just prior to the '06 election in the Show-Me state; the unsuccessful lawsuit brought by the DoJ against MO SoS Robyn Carnahan alleging more voters on the rolls than actual eligible voters; and the unconstitutional Voter ID law as pushed through the MO legislature as drafted by the slime-ball Hearne.

As well, McClatchy finally outs the supposedly "non-partisan" American Center for Voting Rights (ACVR) [3], as created by Hearne and RNC Communications director, Jim Dyke. We began reporting on ACVR just three days after they went public on March 22, 2005 [4] to testify before then-Rep. Bob Ney's (R-OH) House Administration Committee on *Democratic* attempts at "vote supression" during Ohio's 2004 Presidential Election.

Gordon finally exposes the ACVR in the mainstream media for what it actually was: Little more than a well-coordinated, (and still-mysteriously-funded) scam to produce public propaganda to support the GOP's insider push in swing states for voter suppression legislation and tactics by Republican officials.

Though the ACVR claimed tax-exempt 501(c)3 status from the beginning (despite their inability to show evidence of same), their "non-partisan" status was neatly embellished several months after they formed when they added "Democrat" Brian Lunde as their Executive Director. As Gordon writes...

> Joining the push to contain voter fraud were Missouri Sen. Kit Bond, who charged that votes by dogs and dead people had defeated Ashcroft, GOP Gov. Matt Blunt, whose stinging allegations of voter fraud were later debunked, and St. Louis lawyer Mark "Thor" Hearne, national counsel to President Bush's 2004 reelection campaign who set up a non-profit group to publicize incidents of alleged voter fraud.
>
> ...
>
> [I]n February 2005, Hearne helped establish the non-profit Center for American Voting Rights,

> which issued lengthy reports alleging voter fraud in states across the country, including Missouri. One director for the supposedly non-partisan group was Brian Lunde, a former executive director of the Democratic National Committee, who switched parties in 2000 and headed Democrats for Bush in 2004.

We covered the Lunde element of the scam back in August of '05 [5] as the bulk of the MSM were still quoting reports from the phony group, and using their spokesmen as sources identified as "non-partisan," "grass roots," and "voting rights advocates."

Our article earlier today [6] (and several prior to it, most recently here [7] and here [8]) reveals still more of Hearne's Missouri machinations and how his direct connections to the White House and DoJ led to the firing of the U.S. Attorney in Arkansas, Bud Cummins. The Republican attorney had been investigating both Gov. Matt Blunt and Hearne's lawfirm, Lathrop & Gage --- who have long served as Blunt's legal reps --- at the time of Cummins's unwarranted removal and subsequent replacement by a Rove protégé.

Gordon's complete article [9] is a must-read. But allow us to highlight a few key passages concerning Hearne specifically, as well as Rove, Blunt, Sen. Kit Bond, DoJ "voter fraud" zealot/operative Bradley Schlozman (who would be installed, despite a lack of any previous prosecutorial experience, as *interim* U.S. Attorney in MO's Western District, just in time to bring several inappropriate, unsupported, and unprecedented "voter fraud" cases in the days prior to the '06 election), and the rest of the corrupt Missouri politicians/gangsters willing to use their offices in order to undermine democracy for their own personal, political gain.

"Few have endorsed the strategy with more enthusiasm than White House political guru Karl Rove," writes Gordon, "and nowhere has the plan been more apparent than in Missouri."

He reports that for all the sturm and drang in Missouri concerning allegations of "voter fraud," little, if any, was actually ever proven to be true. While in the meantime, the entire scheme has now been revealed as "part of a wider effort to protect the GOP majority in Congress with a series of measures to dampen Democratic turnout."...

> Now, six months after freshman Missouri senator Jim Talent's defeat handed Democrats control of the U.S. Senate, disclosures in the wake of the firings of eight U.S. attorneys show that GOP campaign to protect the balloting was not as it appeared.
>
> In fact, no significant voter fraud was ever proven.
>
> Instead, the Republican preoccupation with voter fraud was part of a wider effort to protect the GOP majority in Congress with a series of measures to dampen Democratic turnout. They included stiffer voter ID requirements, wholesale purges of names from lists of registered voters and tight policing of liberal get-out-the-vote drives.
>
> Few have endorsed the strategy with more enthusiasm than White House political guru Karl Rove, and nowhere has the plan been more apparent than in Missouri.

Gordon unearths this nugget about a visit by Rove to Missouri just prior to the 2006 Election and his meeting with "Republican strategists" and "a large number of lawyers that are standing by" to take on the "threat of voter fraud."

> In an interview with conservative talk show host Hugh Hewitt a couple of days before the election, White House adviser Rove said he had just visited Missouri and met with Republican strategists who "are well aware of" the threat of voter fraud. He said the GOP had "a large number of lawyers that are standing by, trained and ready to intervene" to keep the election clean.

One can safely assume that Rove met with "Republican strategist" and "lawyer" Hearne, as the St. Louis attorney was the point man, in Missouri and elsewhere, for the entire national scam. Earlier in the year, Rove thanked Hearne [10], by name, for his "work on clean elections" in 2000 and 2004, during an April 2006 speech at a Republican National Lawyers Association (RNLA) conference.

Gordon traces the early moments of Hearne's emergence on the scene back to an incident during the 2000 Election in St. Louis which would eventually feed the entire national GOP-backed voter suppression effort...

> It's difficult to capture the emotional debate over voter fraud in Missouri without considering the Election Day tumult in St. Louis on Nov. 7, 2000. Hundreds, perhaps thousands of voters were turned away from the polls because their names weren't on official voter lists, and many of them converged on the city's election board seeking assistance.
>
> Responding to the bedlam, Democrats won an emergency court order keeping some polls open beyond their scheduled 7 p.m. closing. That outraged Republicans and Hearne, the Bush campaign lawyer, won an emergency appeals court ruling that shut the polls within an hour.
>
> In the ensuing days, Sen. Bond blamed Ashcroft's defeat on "a criminal enterprise."
>
> The following summer, then Secretary of State Blunt alleged in a 47-page investigative report that the use of affidavits to allow more than 1,000 "improper ballots ... compels the conclusion that there was in St. Louis an organized and successful effort to generate improper votes in large numbers."
>
> But an investigation by the Justice Department's Civil Rights Division, launched before Ashcroft settled in as U.S. attorney general in 2001, found the reverse.

As we've charged many times, in scores of The BRAD BLOG [11] articles, Hearne then plied his trade as both an oft-quoted mouth piece in the media, and more insidiously, as a back room man, helping to create staged events like; the James Baker/Jimmy Carter chaired "Blue Ribbon National Election Reform Commission" [12] (which, surprise surprise, ended up advocating for [13] Photo ID measures at the polls); a recent study by the U.S. Election Assistance Commission (EAC) which was first buried [14] and then altered [15] when it failed to show the evidence of "voter fraud" that Hearne and the EAC's then-chair, Paul DeGregorio, a St. Louis colleague of Hearne's, had hoped for; and most destructively, legislation in a number of states attempting to force Voter ID restrictions at the polls despite millions of citizens who would have no ID to meet the narrow provisions which have been ruled unconstitutional already in several states.

As Gordon writes:

> Republican state Sen. Delbert Scott of Lowry, Mo., chief sponsor of the photo ID bill last year, said **Hearne helped draft it and served as a key adviser.**
>
> Hearne did not respond to several requests for comment. His organization closed down its Internet site in March and has since disappeared from view.

Again, we encourage you to read Gordon's entire piece [16] (and hope that he, and others who chance upon our coverage here, will peruse our detailed reports and documents on Hearne and the ACVR scam via our Special Coverage Page [17] devoted to the matter). But before we leave you for now, a quote from Missouri's Democratic Rep. William Lacy Clay Jr. in the article sums the entire issue up perfectly.

"The real problem has never been vote fraud," Clay said in a recent interview. "It's access to the polls. In the last 50 years, no one in Missouri has been prosecuted for impersonating someone else at the polls. But thousands of eligible voters have been denied their constitutional rights ... It's sickening."

Sickening, indeed. Glad the mainstream media are finally beginning to catch on.

[18]

[19] For more information on the "non-partisan" tax-exempt ACVR "Voter Fraud" scam and the snakeoil salesmen who invented it, Bush/Cheney '04 National General Counsel Mark F. "Thor" Hearne and RNC Communications Director Jim Dyke, please see BRAD BLOG's full Special Coverage of the "American Center for Voting Rights" at http://www.BradBlog.com/ACVR [20].

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URL to article: http://www.bradblog.com/?p=4500

URLs in this post:
[1] banging the drum here at The BRAD BLOG: http://www.BradBlog.com/ACVR
[2] McClatchy article: http://www.realcities.com/mld/krwashington/news/nation/17168096.htm
[3] American Center for Voting Rights (ACVR): http://www.BradBlog.com/ACVR
[4] on March 22, 2005: http://www.bradblog.com/?p=1276
[5] in August of '05: http://www.bradblog.com/?p=1672
[6] Our article earlier today: http://www.bradblog.com/?p=4494
[7] here: http://www.bradblog.com/?p=4447
[8] here: http://www.bradblog.com/?p=4429
[9] complete article: http://www.realcities.com/mld/krwashington/news/nation/17168096.htm
[10] Rove thanked Hearne: http://www.bradblog.com/?p=2678
[11] The BRAD BLOG: http://www.BradBlog.com
[12] "Blue Ribbon National Election Reform Commission":
http://www.bradblog.com/archives/00001316.htm
[13] advocating for: http://www.bradblog.com/?p=1847
[14] buried: http://www.bradblog.com/?p=3611
[15] altered: http://www.bradblog.com/?p=4391
[16] entire piece: http://www.realcities.com/mld/krwashington/news/nation/17168096.htm
[17] Special Coverage Page: http://www.BradBlog.com/ACVR
[18] Image: http://www.BradBlog.com/ACVR
[19] Image: http://www.BradBlog.com/ACVR.htm
[20] http://www.BradBlog.com/ACVR: http://www.BradBlog.com/ACVR

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Bryan Whitener/EAC/GOV
05/03/2007 12:48 PM

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bcc
Subject Fw: electionline Weekly-- May 3, 2007

FYI....Electionline Weekly-- May 3, 2007

----- Forwarded by Bryan Whitener/EAC/GOV on 05/03/2007 12:44 PM -----

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Subject electionline Weekly-- May 3, 2007

electionline Weekly - May 3, 2007
electionline.org

I. In Focus This Week

New Spanish-Language Glossary Aims to Help Election Officials

First revision of glossary of voting terms since 1979

By M. Mindy Moretti
electionline.org

When is a member contribution not a member contribution? When in Cuban-Spanish it's an aportes de los miembros (masculine) and in Puerto Rican-Spanish it's a contribuciones de los miembros (feminine) and for other Spanish-speakers, it's an aportaciones de los miembros (feminine).

The last time a Spanish-language glossary of voting terms was produced - by the Federal Election Commission (FEC) in 1979 - there were approximately 11 million people in the United States who spoke Spanish as their primary language. The Language Minority Provision of the Voting Rights Act of 1965 requiring some jurisdictions to provide foreign-language voting information was four years old and only 16 jurisdictions in six states and two states in their entirety were required to provide voting information in Spanish.

Twenty-eight years later, there are approximately 31 million people in the U.S. who speak mainly Spanish at home, 65 jurisdictions in 15 different states as well as four states in their entirety are required to provide voting information in Spanish, and the U.S. Election Assistance Commission (EAC) has released a new and updated Spanish-language glossary of voting terms.

"We had an obligation to update this helpful tool for Spanish-speaking voters and the election officials who serve them, and I am very pleased to announce that we have gotten it done," EAC Chair Donetta Davidson said in a statement.

The EAC convened its first Language Working Group as part of the Language Accessibility Program in 2005. From that group - made up of local election officials, Congressional staff members, national advocacy groups as well as research and public policy organizations - came a variety of recommendations including the need to re-do the voting terms glossary.

From abandoned ballot (papeleta abandonada) to zoning regulations (normas de zonificacion) the glossary covers 1,843 terms and phrases used in the election process. That's more than double the number of terms that were in the FEC's 1979 glossary.

When compiling the list of terms, the contractor for the EAC consulted with members of the working group and with all the state election Web sites to see what terminology was frequently being used in the election world.

"So many words and terms simply didn't exist in 1979. There is a lot more technical language in the election field now," explained Edgardo Cortes, EAC election research specialist. "We went through six or seven revisions of the list to eliminate duplicate terms and terms that were too local."

Some localities, such as Los Angeles County, had their own Spanish-language glossary of elections terms. The EAC relied heavily on them for assistance with the new glossary.

"I think they [Los Angeles County] showed a lot of initiative in producing their own glossary," said EAC Vice-Chair Rosemary Rodriguez. "And they shared it freely not only with us, but with other jurisdictions as well."

Even though much has changed in the world of elections and some voting equipment or terminology may no longer be used on a daily basis, Cortes said no words, such as chad (perforacion), were eliminated because they still have historical context.

To ensure that translations were culturally and linguistically appropriate, terms were translated and reviewed by a multi-dialect team of translators representing four of the main regions of origin of the Hispanic population living in the United States - Mexico, Puerto Rico, Cuba and Central America.

And this is sometimes where they ran into problems and had to print multiple translations for one word or phrase, as was the case with member contribution. Although the translating of the glossary was done by an outside contractor, it was up to Cortes and another member of the EAC staff to make sure that those translations were accurate and culturally relevant.

"We had to make sure that we weren't doing literal translations," Cortes said. "One of the biggest complaints we heard during the working group was that they appreciated the effort being put forth by election administrators, but a lot of times the translation was done very literally and it didn't provide the same meaning."

But sometimes a word or phrase had to be literally translated. Such was the case with sip/puff tube for voters who are not able to use the touch screen or touch pad, which, translated is: tubo de succión/exhalación para electores queno pueden utilizar la pantalla táctil o la almohadilla táctil.

According to Cortes, so far the feedback on the new glossary of terms has been positive.

"We've actually gotten several emails from election officials and they are very excited about it," Cortes said. "We're getting lots of requests for printed copies, which should be available sometime late next week."

Next on the EAC agenda for translation are Pacific Rim languages including Chinese, Japanese, Vietnamese, Korean and Tagalog.

According to Rodriguez, the language working group is already in place for the next round of translations and the commission has reserved money in the FY07 budget to translate and produce a glossary in these other languages and hopes to have them in time for the 2008 election cycle.

After these translations are complete, Rodriguez said the Commission hopes to move on to translations for American Indian languages.

"It's going to be a big challenge, but it is on our work plan to try to attempt to produce a glossary," she said. "There are so many different dialects and Navajo, which is surely one we would attempt to do, is probably one the most complex languages in the world. We're really going to have to put our shoulders to the wheel when we tackle that."

II. Election Reform News This Week

- The U.S. Election Assistance Commission this week gave Florida permission to use previously allotted, but unspent, HAVA funds to purchase new paper-based voting machines. According to *The Miami Herald,* the decision came after a two-hour meeting with the EAC, which rejected the initial bid to tap federal money, but then told the state how to get the $28 million it asked for anyway. The state could secure the funds by reimbursing itself for the millions the state spent on new voting machines after the 2000 election. Julie Hodgkins, general counsel for the EAC, said Florida and its counties never reimbursed themselves for the full costs when they scrapped punch-card voting machines in 2000.
- Early voting began this week in Texas and a "glitch" with the state's new voter registration database was to blame for a series of problems voters encountered. Names of registered voters - including the mayor and mayor pro-tem of the city of Prairie View - did not appear on voter rolls as the polls opened for early voting on Monday. Scott Haywood, a spokesman for the Texas secretary of state told *The Houston Chronicle* that

the agency received complaints from about 17 jurisdictions that did not get a complete report of registered voters for the May 12 elections. Haywood attributed the problems to technical setbacks in the Texas Election Administration Management System, a new state database that makes it easier to track people moving around Texas. He said the agency has made improvements to the system and all counties should have received a completed list by Tuesday.

- Vote centers debuted this week in Indiana to fairly good reviews. The two vote centers that opened in Richmond on Monday for early voting make up half of four centers in Wayne County that replace 31 precinct polling places. The other two vote centers will open on May 8. "I came out to support this new system and I love it," first-time voter Sharon Brant told the *Palladium-Item* . "I think it's a great idea and I appreciate the convenience of it. Everything went great." Wayne County is the first in Indiana to vote using the format, which could be adopted statewide.
- Robert Diebold is running for office in Ohio, but the candidate has no interest in riding the voting-machine giant's coattails to victory. Diebold, a Republican candidate for mayor of Newark, has no connection to the Ohio-based company. But he was so concerned about his name being associated with the company that provides touch-screen voting machines to Licking County that he contacted the local elections board. "I would like my name not to be an issue," Bob Diebold told *The Columbus Dispatch* . "I would think that would be unfair. I wanted them to cover it up. I'd donate the duct tape." The county election board turned to Secretary of State Jennifer Brunner (D) for guidance and her staff told the county it could cover up the Diebold name on voting machines if it wanted to, but the county declined. Jay Morrow, director of elections for Liking County said that the candidate himself is the only one who has raised any concerns about the coincidence.

III. Opinion This Week

National: Vote fraud, II
California: Voting machines
Colorado: Vote by mail
Florida: Voting machines, II
Hawaii: Electoral College
Indiana: Vote centers
Louisiana: Voter registration
Pennsylvania: Poll workers
Texas: Voter ID, II
Wisconsin: Voter ID, II

Some sites require registration

IV. Job Postings

All job listings must be received by 12 p.m. Eastern on Wednesday for publication in our Thursday newsletter. Job listings are free but may be edited for length. Whenever possible, include Internet information. Please email job postings to mmoretti@electionline.org

ELECTIONS DIRECTOR - Navajo County, Ariz. Looking for a rewarding career while enjoying a relaxing country lifestyle? Navajo County and the White Mountains are for you! Navajo County is accepting applications for an Elections Director. This position is responsible for managing the Elections Department to include: planning, organizing and directing County wide elections; establishing policies, procedures and guidelines; ensuring voting and voting procedures are in compliance with Arizona State statutes; making public presentations; certifying results of elections; and developing and administering the department's budget. The successful candidate should have a Bachelor's Degree in Public or Business Administration, Political Science, or a closely related field; and three years of progressively responsible experience in conducting governmental elections, including one year in a supervisory or management capacity; **OR** equivalent combination of education, training and experience; and must pass the Arizona State Election Certification program. Salary range is $50,750 - $63,438 per year, depending on qualifications. Benefits include paid leave. Please submit a Navajo County application to: Navajo County Governmental Complex; Attn: Human Resources; PO Box 668; Holbrook, AZ 86025. Position description and application information available at www.co.navajo.az.us. EOE.

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Bryan Whitener/EAC/GOV
05/04/2007 10:14 AM

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bcc
Subject FYI - Daily News (5-4-07, Frid)

Commissioners:

The following items are in the news.

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National
- Rep. Artur Davis Fills Open Seat on House Administration
- Congressman Artur Davis Newly Appointed To House Administration Committee (Davis press release)

Florida
- Florida Acts to Eliminate Touch-Screen Voting System (NYT)
- Seeking an Edge, Florida Changes Its Primary Date (9 months from now)
- Florida gets money for e-voting hardware swap (Marc Sonjini; Computer World; EAC mentioned)
- U.S. State to Dump Touch-Screen E-Voting Systems (Marc Sonjini; PC World, IDG News; EAC mentioned)
- Lawmakers ditch touch-screen machines, move up primary
- FL-13 task force will turn over investigation to GAO

Louisiana
- Dardenne objects, but La. House panel OKs more satellite voting
- Lawmaker suggests mail-in voting system for La. elections

New York
- New voting machines delayed again (Ciber & EAC mentioned)

Rhode Island
- Bad Voter Registration Database in Rhode Island: The numbers don't add up

Texas
- Voter records system too flawed, counties say
- Harris County Uncovers Voter Fraud Plot

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* Also included below is the weekly summary of election reform news and opinion that appears in *electionline.org* today. Focus on new EAC Spanish Language Glossary of Election Terms.

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National
Rep. Artur Davis Fills Open Seat on House Administration

Rep. Artur Davis Fills Open Seat on House Administration

Roll Call
Thursday, May 3; 4:29 pm
John McArdle

Rep. Artur Davis (D-Ala.) has been tapped by Speaker Nancy Pelosi (D-Calif.) to fill the opening on the House Administration Committee left after panel Chairwoman Juanita Millender-McDonald (D-Calif.) died last month following a battle with cancer.

Davis was introduced at a full committee hearing this morning that was lead by acting Chairman Robert Brady (D-Pa.). At that hearing several members on both sides of the aisle warmly remembered the late chairwoman.

A close friend of Millender-McDonald, Davis was granted a special waiver by Pelosi to keep his two other panel seats on the House Ways and Means and Judiciary committees while serving on the House Administration panel. He also serves on the Democratic Steering and Policy Committee.

"While I certainly wish that I had come on the committee under different circumstances, I am honored to serve on a panel which regulates federal election law and has significant responsibility for Congressional operations," Davis said in a release Thursday.

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National
Congressman Artur Davis Newly Appointed To House Administration Committee (Davis press release)

Congressman Artur Davis Newly Appointed To House Administration Committee

PRESS RELEASE FROM THE OFFICE OF
FOR IMMEDIATE RELEASE
May 3, 2007

Congressman Artur Davis
7th Congressional District of Alabama
208 Cannon House Office Building
Washington, DC 20515-0107

- 7th District representative once again recognized and promoted by House leadership -

WASHINGTON - U.S. Representative Artur Davis (D-Birmingham) today received an appointment to the Committee on House Administration. Congressman Davis fills the seat once held by Birmingham-native U.S. Representative Juanita Millender-McDonald of California who passed away suddenly two weeks ago.

"I was asked by the Speaker to fill the vacancy left by Congresswoman Millender-McDonald's passing. While I certainly wish that I had come on the committee under different circumstances, I am honored to serve on a panel which regulates federal election law and has significant responsibility for Congressional operations," Davis said.

The House Administration Committee is charged with oversight of the nation's federal election law as well as the day-to-day operations of the House. The committee, which has one of the most exclusive memberships in the House with only nine members from both sides of the aisle, is responsible for, among other things, the overall security of the Capitol complex as well as the operation of the Library of Congress.

Congressman Davis has not received a placement on either of the committee's subcommittees at this time. With a waiver granted from Speaker Pelosi, he retains his positions on two exclusive bodies -- the Committee on Ways and Means and the Committee on Judiciary - as well as his post on the Democratic Steering and Policy Committee.

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Florida
Florida Acts to Eliminate Touch-Screen Voting System (NYT)

Florida Acts to Eliminate Touch-Screen Voting System

New York Times
May 4, 2007
By TERRY AGUAYO and CHRISTINE JORDAN SEXTON

MIAMI, May 3 – Florida legislators voted on Thursday to replace touch-screen voting machines installed in 15 counties after the troubled 2000 presidential election here with a system of optical scan voting.

The new system is scheduled to be running in time for the 2008 presidential election.

The move is the nation's biggest repudiation of touch-screen voting, which was embraced after the 2000 recount as a way to restore confidence that every vote would count. But the reliability of touch-screen machines has increasingly come under scrutiny, as has the difficulty of doing recounts without a paper trail.

"This legislation will preserve the integrity of Florida's elections and protect every Floridian's right to have his or her vote counted," Gov. Charlie Crist said in a statement. "Florida voters will be able to have more confidence in the voting process and the reliability of Florida's elections."

With optical scanning, voters mark paper ballots that are counted by scanning machines, leaving a paper trail that remains available for recounts.

The 15 counties that will move to the optical scanning, which is in place in the state's other 52 counties, account for about 51 percent of the state's 10.4 million registered voters. They include Miami-Dade, Broward, Palm Beach and Hillsborough Counties.

The plan, part of a bill that moves the state's presidential primary to Jan. 29, was announced by Governor Crist in February. The Florida Senate voted for it last week, and the House of Representatives approved it unanimously on Thursday.

In November, more than 18,000 votes that were cast on touch-screen machines were not recorded in the close Congressional race in Sarasota County between Vern Buchanan, a Republican, and Christine Jennings, a Democrat. Mr. Buchanan was declared the winner after a recount gave him a 369-vote victory.

State officials said the shift to optical scanning was expected to cost $28 million. This week, the federal Election Assistance Commission said the state could pay the costs using money from the Help America Vote Act, which provides money to improve voting equipment.

But some critics say the switch will be more costly.

Arthur Anderson, the elections supervisor in Palm Beach County, estimated the cost to carry out the plan in his county would be $19 million.

Terry Vaughan, the supervisor of elections in Bradford County and president of the Florida State Association of Supervisors of Elections, said the $28 million figure was based on the number of precincts in the state during the 2006 election, but that number has since grown.

"It will not be enough to cover the entire bill, but it will cover the basics and the bare minimum," Mr. Vaughan said.

The legislation approved on Thursday allows for the use of touch-screen machines for voters with disabilities until 2012, when paper-ballot technology for those voters will be required.

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Florida
Seeking an Edge, Florida Changes Its Primary Date (9 months from now)

Seeking an Edge, Florida Changes Its Primary Date

New York Times
May 4, 2007
By ABBY GOODNOUGH

MIAMI, May 3 – Casting more uncertainty over the presidential nominating process for 2008, the Florida Legislature on Thursday moved the state's primary up to Jan. 29, ignoring the threat of sanctions from the national Republican and Democratic parties.

The new date puts the Florida primary ahead of contests in all but four states. Political leaders here hope it will give Florida, the most populous swing state, a bigger role in choosing presidential nominees.

But officials in other states said Florida's move would only create more chaos around the nominating process, which has already been upended by other states' decisions to hold earlier primaries. New Hampshire may move up its primary as a result – possibly even to this year – and in South Carolina, Republican officials said they, too, would advance the date of their primary.

"South Carolina will name a date that keeps us first in the South," said the party chairman, Katon Dawson. "It could be as early as Halloween and our version of trick-or-treat, if we have to."

Choosing primary dates has always been contentious, with states that held primaries late in the season feeling marginalized. But frustration soared this year, and dozens of states began to jostle for position, with more than 20 so far settling on Feb. 5 or considering it.

The shifting dates have forced the presidential campaigns to reconsider every aspect of their nominating strategy – where to compete, how to spend money, when to start television advertising.

Both parties have been trying to put a halt to the leapfrogging. They have said they would penalize all but a handful of states if they hold a primary before Feb. 5, stripping them of half their delegates to the national nominating conventions. Under Democratic Party rules, the candidates can also be penalized, losing the delegates they won in the rule-breaking state.

But Florida officials scoffed at those threats, calling the conventions little more than a formality.

"We have people who get invited to a big party where they drop a balloon and people wear funny hats," said Marco Rubio, speaker of the State House of Representatives. "But they don't have any role to play."

"At the end of the day," said Mr. Rubio, a Republican, "the truth of the matter is that the nominee of either party is going to want to make sure they have not offended the big donors and the biggest activists in the most important state in the country that is electorally available."

Some of the states that have moved their primaries to Feb. 5, including California, Connecticut, New Jersey and New York, said they did not expect to seek even earlier dates.

"I just don't see it as likely," said Ron Nehring, chairman of the California Republican Party. "California is going to be relevant, regardless of what other states choose to do."

In addition to New Hampshire, where the date is tentatively scheduled for Jan. 22, the states with contests before Jan. 29 are Iowa and Nevada.

In recent presidential election years, Florida's primary has taken place in March.

The Florida House voted unanimously to move it up on Thursday, a week after the Senate approved the measure. In the same legislation, it approved Gov. Charlie Crist's plan to replace the touch-screen voting machines used in many of Florida's counties with paper ballots counted by scanning machines.

Spokesmen for two Democratic presidential candidates, Senators Hillary Rodham Clinton of New York and Barack Obama of Illinois, indicated they would not hold back from campaigning in Florida.

"The D.N.C. and the Florida state party will arbitrate this and we will compete on the final field vigorously," Bill Burton, a spokesman for Mr. Obama, said in an e-mail message, referring to the Democratic National Committee.

Stacie Paxton, press secretary for the Democratic National Committee, said that the party would hold fast to its rules but that the committee was working with the state party to find alternatives complying with the rules. Ms. Paxton suggested that Florida's primary could be nonbinding and its delegates still allowed at the nominating convention, if the state agreed to hold a caucus later in the year.

"This is not the first time that a state legislature has set its primary on a date outside D.N.C. party rules," she said.

Though Florida meant to pump up its importance in the primaries, it might have done better sticking to March, said William Galvin, the secretary of state in Massachusetts and leader of a National Association of Secretaries of State committee that opposes the movement toward earlier primaries. If no candidates emerge as clear front-runners after the "super-duper" primary on Feb. 5, Mr. Galvin said, states that vote later could prove pivotal.

"This is kind of like the track touts trying to figure out what's going to happen at the Kentucky Derby," he said.

The surest outcome of Florida's decision, Mr. Galvin said, is that New Hampshire's primary, the first in the nation, will be moved earlier. "This gives a perfect excuse if they were looking for one," he said.

William Gardner, New Hampshire's secretary of state, would not say Thursday when he planned to hold the state's primary, but also would not rule out that it could take place before Jan. 1. "I hope not," Mr. Gardner said. "But it's not beyond the realm of possibility."

Mr. Rubio, the speaker of the Florida House, said moving up the primary would force presidential candidates to pay more attention to issues that are important locally, like soaring property insurance rates and even the immigration policy for Venezuelans.

But Mr. Galvin said that was unlikely, with so many primaries bunched together early in the process. "The idea that you go to a state and talk about the issues they care about," he said, "is less realistic than it ever was before."

Reporting was contributed by Christine Jordan Sexton from Tallahassee, Fla.; Jennifer Medina from Hartford; Ronald Smothers from Trenton; and Danny Hakim from Albany.

##########

Florida
Florida gets money for e-voting hardware swap (Marc Sonjini; Computer World; EAC mentioned)

Florida gets money for e-voting hardware swap

Computerworld
May 3, 2007
Marc L. Songini

May 03, 2007 (Computerworld) The U.S. Election Assistance Commission (EAC) will allow the state of Florida to use millions of dollars in federal funds to swap out its touch-screen voting systems for new optical scan devices.

The EAC is tasked with helping states implement the Help America Vote Act (HAVA). Earlier this week, the EAC ruled in favor of Florida Secretary of State Kurt Browning, who had sought to use HAVA funds for the voting system swap. HAVA was passed by Congress in 2002, in part with the goal of replacing manual level or punch card voting systems with electronic ones. It also dictated that every voting precinct have one specially equipped e-voting machine that would allow blind voters to cast their ballots unaided.

Subsequently, many states such as Florida relied heavily on touch-screen systems to satisfy the HAVA requirements.

However, critics have charged repeatedly that Direct Recording Electronic (DRE) devices are unreliable, can be easily hacked, and don't give voters the transparency they need to verify that their votes are being recorded correctly. To address those concerns, Florida Gov. Charlie Crist in February submitted a bill that would provide $32 million to replace the DREs with hardware that has a paper trail for voters to review their votes. That bill passed the state senate and was sent to the state House, which approved it today and sent it to Crist for his signature.

Funding for any switch to new e-voting hardware had been an issue. As a result, Browning appeared before EAC board members to explain the state's legislation. He stressed that "there is a perception across the state that indicates many voters do not trust electronic voting machines and want to cast a paper ballot," according to a copy of his testimony supplied by his office. "For Florida, this perception has become reality in large part and we want to address those concerns."

Browning had noted that Crist's legislation "moves 100% of all ballots cast in Florida out to paper, while also improving our ability to administer federal elections."

Crist's plan allows a single DRE system to remain in every election precinct to enable blind voters to cast their ballots. However, these systems could also be equipped with printers to provide a voter verifiable paper audit record (VVPAT), which could be used for canvassing or for recount purposes. Browning asked the EAC to allow HAVA funds to be used to pay for some of Crist's proposals.

The EAC ruled yesterday that it would allow as much as $29.7 million to be used to implement the legislation.

A spokesman for Browning said the secretary of state is "very pleased" with the EAC decision. Even so, the measure approved today by the Florida House did not contain language providing for the outfitting of the handicapped-accessible DREs with printers.

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Florida
U.S. State to Dump Touch-Screen E-Voting Systems (Marc Sonjini; PC World, IDG News; EAC mentioned)

U.S. State to Dump Touch-Screen E-Voting Systems

Florida legislature's move could ripple to other states.

Marc L. Songini
PC World
IDG News
Thursday, May 03, 2007 04:00 PM PDT

In a major shift on e-voting that could ripple to other states, the Florida legislature Friday voted to replace nearly all of the state's touch-screen voting systems with optical scan devices.

Florida Governor Charlie Crist, who initially offered up the bill mandating a change in e-voting systems earlier this year, applauded the Florida legislature for acting after the state House approved the measure. It had already been okayed by the state Senate.

The law mandates the replacement of touch-screen systems with optical scan devices and also moves up the date of Florida's presidential primary to the last Tuesday in January. In 2008, that would be Jan. 29.

Touch-screen systems have come under criticism for being unreliable, easily hacked and lacking the transparency voters need to trust that their votes are actually being counted. To address those concerns, Crist offered a bill that would replace the systems in 17 Florida counties with optical scan devices, which require filling out a paper ballot that can later be used for canvassing or recount.

"The right to vote is the foundation of our nation's democracy, and Florida voters can rest assured that they will have an election system they can believe in," Crist said. "This legislation will preserve the integrity of Florida's elections and protect every Floridian's right to have his or her vote counted. Florida voters will be able to have more confidence in the voting process and the reliability of Florida's elections...."

He also noted that the law "will establish a paper trail for votes cast in Florida elections...."

Earlier this week, the federal Election Assistance Commission (EAC) ruled that money appropriated by Congress through the Help America Vote Act (HAVA) of 2002 can be used to replace Florida's touch-screen systems. Some handicapped-enabled touch-screens will remain in Florida to comply with HAVA, which dictates that each election precinct have one e-voting device that allows a blind voter to cast a ballot unaided.

The law comes as welcome news to the opponents of touch-screen systems.

"I think this is fantastic," said Avi Rubin, a computer science professor at Johns Hopkins University and a Maryland elections judge. A high profile author and critic of touch-screen systems, he noted that Maryland has passed a similar law, although it won't take effect until 2010. "I'm thrilled with the direction these states are going," he said. "It's great that awareness of the risks of Direct Recording Electronics (DREs) has grown to the point where legislators understand the issues.

"I think we had some rough going for a few elections, but that switching to paper ballots and optical scans sets us back on course," Rubin said.

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Florida
Lawmakers ditch touch-screen machines, move up primary

Lawmakers ditch touch-screen machines, move up primary

Miami Herald
May 3, 2007
BY GARY FINEOUT
gfineout@MiamiHerald.com

TALLAHASSEE -- Florida's experiment with touch-screen voting machines is over.

The Florida Legislature voted Thursday morning to spend nearly $28 million to scrap the ATM-styled machines used in 15 Florida counties, including Miami-Dade and Broward and replace them with ones that use paper ballots.

The push to switch Florida from the touch-screen machines was a top priority of Gov. Charlie Crist, who said he doesn't want the state to be embarrassed anymore by its elections.

"This is a great day for Floridians," Crist said. ``We will now have much better and much greater integrity in our voting systems."

The House voted 118-0 Thursday to approve the bill, which also moves up Florida's presidential primary to Jan. 29, making it one of the earliest in the nation. The Senate approved the bill last week.

"This moves Florida up in the picking of the next leader of the free world, it puts us in a place where we should have been before," Crist said.

Moving up the presidential primary was a top priority for House Speaker Marco Rubio, who included it in his 100 Ideas book that he released last fall. Democrats have also backed the idea, but national Democratic Party leaders have warned they will punish the state party if the primary is held earlier than Feb. 5.

This marks the second time in the past decade that Florida election supervisors will be forced to make major changes to how they conduct elections.

The 2000 presidential election, which George Bush ultimately won by 537 votes, exposed flaws in Florida's voting systems and prompted the state to ban punch-card voting machines. Most counties shifted over to ones that scan a paper ballot, but 15 counties opted to use more expensive touch-screen machines. And every county wound up getting at least some touch-screen machines, in order to comply with federal laws that require that the blind and disabled be able to vote in secret.

But the touch-screen devices have come under fire because they leave no paper trail. Last fall more than 18,000 voters in Sarasota County did not vote in a heated congressional race that was won by Republican Vern Buchanan by 369 votes. Democratic rival Christine Jennings has asserted that the machines in her home county malfunctioned.

Under the bill that Crist will sign, the 15 counties that use touch-screen machines will have until summer 2008 to replace them with optical-scan machines. The bill gives counties until 2012 before disabled voters must also have access to machines that have a paper trail.

Some county supervisors have said they are worried that they will not have enough time to move to new systems. But Secretary of State Kurt Browning, a former elections supervisor, said he believed that counties should have enough time.

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Florida
FL-13 task force will turn over investigation to GAO

FL-13 task force will turn over investigation to GAO

The Hill
By Aaron Blake
May 03, 2007

A special House task force voted yesterday to refer an investigation into Florida's 13th district House race to the Government Accountability Office (GAO), and task force Chairman Charles Gonzalez (D-Texas) said he hopes to see results in as few as 45 days.

The task force voted 2-1 along party lines on a motion to move forward with the investigation, with the lone Republican, Rep. Kevin McCarthy (Calif.), dissenting. But the panel proceeded to vote unanimously on the course of the investigation after some hand-wringing over the language of the motion.

Gonzalez said the 45-day timeframe is ambitious and that it will be up to the GAO to shape the investigation and ask for more time if needed.

"I think we just had a vote right now that acknowledges that this is a pretty good way to proceed," Gonzalez said.
The first vote was a victory for Democrat Christine Jennings, who is contesting her 369-vote loss to Rep. Vern Buchanan (R) and says the state's review of the election was flawed. Florida's testing has reaffirmed the result and found no problems.
The second vote was a mixed bag, with both sides professing satisfaction at the course of the investigation but not getting exactly what they wanted.

While Buchanan's camp and McCarthy saw no grounds for the task force to call an investigation at all, Jennings's camp has asked for secret software codes to review the electronic voting machines using its own experts.

Jennings contends that a malfunction caused an abnormal amount of Sarasota County voters – about 18,000 – not to cast a vote in the race. She said she is thrilled with the decision of the task force, which was created in March by the House Administration Committee.

"The 18,000 people in Sarasota who lost [the right to vote] and the millions of Americans nationwide who use electronic voting machines deserve answers," Jennings said.

In the testiest exchange of a mostly amiable hour-long meeting, McCarthy expressed his frustration over the language of the second motion, which stated that Gonzalez had the authority to approve the testing the GAO wanted to perform.
McCarthy said the entire task force should check off on the testing and was not mollified by assurances from Gonzalez and the third panel member, Rep. Zoe Lofgren (D-Calif.), that that would be the case.

The election contest has been a heated partisan dispute to this point, but the task force emphasizes nonpartisanship and unanimity.

"This place runs on rules, and when you look back at something, the rule says you are empowered to do this," McCarthy said. He added that he was trying to find a way for the panel to act unanimously: "I have to be very honest with you – I don't find this to be that."

Gonzalez agreed to alter the language but expressed reservations about prolonging the process by involving the full task force in minutiae.

An attorney representing Buchanan, Hayden Dempsey, said that shift was important for the transparency of the investigation. He expressed tempered encouragement.

"We think having an independent government entity do the testing is probably a fair thing," Dempsey said. "Obviously, the devil's in the details. We'll be watching to see who the GAO selects to assist them. The fact is that a lot of so-called experts are very partisan."

Once the investigation is complete, the full committee and full House would have to approve any task force recommendation.

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Louisiana
Dardenne objects, but La. House panel OKs more satellite voting

Dardenne Objects, But La. House Panel Oks More Satellite Voting

New Orleans Times Picayune
5/2/2007, 5:37 p.m. CT
By DOUG SIMPSON
The Associated Press

BATON ROUGE, La. (AP) – Voters still displaced by the 2005 hurricanes should be allowed to cast ballots at "satellite voting centers," outside their normal voting districts, in this year's gubernatorial primary, a state House panel voted on Wednesday.

The House and Governmental Affairs Committee approved a bill recreating the voting centers despite objections from Secretary of State Jay Dardenne, the state's top elections official, who said the measure "would cause chaos in Louisiana's election system."

The bill, by Rep. Jalila Jefferson, would reinstate laws set up for New Orleans' 2006 mayoral election, that allowed city voters living elsewhere because of Hurricane Katrina to vote in any of 11 parishes, including Calcasieu, East Baton Rouge and Caddo, that have metropolitan centers of more than 100,000 residents. Just over 10,000 voters cast ballots at the satellite voting centers for that election, according to the secretary of state's office, some of them bused to Louisiana from Texas and other states.

The law has expired, and Jefferson wants it reinstated in time for the gubernatorial primary in October. Jefferson told the committee that it's important to allow displaced voters, many of whom still wish to return to their home parishes, to stay involved in the hurricane recovery process.

"Voting is an integral part of the rebuilding process," said Jefferson, D-New Orleans.

Her measure would also reinstate other post-storm voting changes that have since expired, including a system of absentee voting that has fewer restrictions for displaced voters.

"All of these were very successful provisions that displaced persons used" to vote, Jefferson said.

Dardenne said reinstatement of the absentee voting provisions would not be a burden.

But he argued that setting up the satellite centers would be difficult – far more so than they were in 2006, when displaced New Orleans voters were able to vote in other parishes during the "early voting" period, prior to election day. Elections workers in parishes such as Caddo and Calcasieu were able to handle the New Orleans voters because no other election was taking place then, Dardenne said.

The New Orleans election "was the only game in town. There were no other elections taking place," Dardenne said.

It could be unworkable this year, Dardenne said, when many statewide and local elections are also scheduled. Election workers will already be burdened by the scheduled elections, he said.

"If this bill passes, you are saying to them, you have to run an additional election for Orleans Parish," Dardenne said. "That is not going to work."

Rep. Charlie Lancaster, the committee chairman, asked Jefferson to drop the provision recreating the satellite voting centers, in consideration of Dardenne's objections. She refused, saying the satellite centers will work.

"I can't compromise on this. I can't do it," Jefferson said.

The panel voted 6-4 to send the bill to the House floor. Voting in favor were Jefferson and Reps. Jeff Arnold, D-New Orleans; Juan LaFonta, D-New Orleans; Charmaine Marchand, D-New Orleans; Rick Gallot, D-Ruston; and Patrick Williams, D-Shreveport. Voting against were Lancaster, R-Metairie; Hunter Greene, R-Baton Rouge; Billy Montgomery, R-Haughton; and M.J. "Mert" Smiley, R-Port Vincent.

On the Net:

House Bill 248 is posted at http://legis.state.la.us/

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Louisiana
Lawmaker suggests mail-in voting system for La. elections

Lawmaker Suggests Mail-In Voting System For La. Elections

By MARSHA SHULER
Baton Rouge Morning Advocate
Advocate Capitol News Bureau
Published: May 3, 2007 - Page: 7a

If efforts to recruit more election workers don't work, Louisiana should start moving to a mail-in ballot system, the head of a House panel overseeing state election laws said Wednesday.

The state is some 5,000 commissioners short of the 20,000 minimum needed to work the polls on election day.

Elections officials complain it's growing harder to recruit people to work long hours at low pay.

The House and Governmental Affairs Committee approved pay raises for the election workers, but rejected shortening election hours.

If the personnel situation "continues to deteriorate," panel chairman Charles Lancaster, R-Metairie, said it could be time to eliminate voting precincts and conduct all elections by direct mail.

Oregon uses a similar system.

The mail ballot idea surfaced as the committee considered House Bill 575, which would require the secretary of state to mail absentee ballots to all registered voters.

Rep. Juan LaFonta, D-New Orleans, said mail ballots would help New Orleans voters displaced by Hurricane Katrina.

Secretary of State Jay Dardenne said mail ballots are worth studying but should not be approved at this point.

Dardenne said the state just invested $30 million in new voting machines.

"The passage of this bill would require this office and our state to conduct a two-track election process and send out 2.8 million or so pieces of (absentee voter) mail," Dardenne said.

The panel approved LaFonta's mail ballots bill on a 6-4 vote. The bill now must go to the House Appropriations Committee because of its $16 million price tag.

In other action, the committee:

Approved House Bill 347, which increases pay for commissioners-in-charge from $150 to $250 and for other election day workers from $50 to $100. The total pay increase package would cost $5.7 million.

Stripped House Bill 248 of a provision that would have cut two hours off the time polls would be open on election day.

Rep. Glenn Ansardi, D-Kenner, wanted the polls to be open from 7 a.m. to 7 p.m. instead of 6 a.m. to 8 p.m.

Approved House Bill 619, which would reinstate special election laws approved in the wake of Hurricane Katrina so displaced voters could participate in mayoral and council elections in Orleans Parish.

The bill, by Rep. Jalila Jefferson-Bullock, D-New Orleans, would establish satellite voting locations in 11 Louisiana parishes for the fall elections.

Dardenne opposed the satellite voting plan.

He said it would create "chaos" in Louisiana.

All the measures go to the House floor for debate.

##########

New York
New voting machines delayed again (Ciber & EAC mentioned)

ELECTIONS: New voting machines delayed again

Journal-Register, NY
May 4, 2007

Lever units to be dusted off for '07, maybe '08

By Jill Terreri/terrerij@gnnewspaper.com
Niagara Gazette

Niagara County voters won't have to learn how to use a new ballot-counting machine this fall.

In fact, county residents might vote for president on the old lever machines in 2008.

None of it was supposed to happen.

The state was ordered by the federal government to adopt new voting legislation and have new machines in place by Jan. 1, 2006.

The state moved slowly on the legislation and, as a result, voting machine testing got off to a late start.

Things weren't helped by the fact that the company the state hired to test the machines, Ciber, Inc., never was certified by the U.S. Election Assistance Commission to perform that service and the work had to be bid to another firm.

The flap with Ciber pushed back new testing to this summer and means new machines won't be certified this year.

The state must certify certain machines so counties know which ones they can choose.

Given the length of time it would take for a manufacturer to produce machines for all of New York's counties, those machines might not be in place for the presidential election next year.

Though New York has broken deadlines and could be in jeopardy of losing $50 million in federal funds to pay for the machines, Republican Niagara County Elections Commissioner Scott Kiedrowski said he's glad the state isn't facing problems in other states where funds have been spent on unsatisfactory machines.

"They're just not functioning," Kiedrowski said. "I'm happy Niagara County hasn't shelled out a dime yet."

As for which machine to choose, Kiedrowski said there's no clear choice and the counties continue to wait for direction from the state.

Lee Daghlian, spokesman for the state Board of Elections, said he doesn't believe the federal government will withhold the funds for different reasons, including the fact that such a move would push the state further behind in replacing the old machines.
A provision to eliminate the financial penalty for states which have not complied with the federal Help America Vote Act, which demands accessible voting machines be in place, was included in an Iraq spending bill that was vetoed by the president on Tuesday.

The provision could be included in other federal legislation, Daghlian said.

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Rhode Island
Bad Voter Registration Database in Rhode Island: The numbers don't add up

Bad Voter Registration Database in Rhode Island: The numbers don't add up

Providence Journal
May 2, 2007
By Paul Edward Parker
Journal Staff Writer

How many people voted in the statewide elections last November?

A. 387,952

B. 390,340

C. 392,884

If you don't know the answer, don't feel bad; neither do state election officials.

The Board of Elections – which oversees the counting of votes – says 392,884 voters cast ballots in the Nov. 7 general election.

The secretary of state's Elections Division – which oversees the state's Central Voter Registration System and tracks who voted in which elections – counted 387,952 voters in the same election as of Jan. 16. In a new tally Monday, that number had risen to 390,340.

That leaves 4,932 ballots that were cast without a voter voting – or 2,544, depending on which number you use from the secretary of state.

The Providence Journal began examining the results of the November election this spring, after reporting last fall that the names of nearly 5,000 registered voters in Rhode Island appear on a federal list of dead people. The Journal sought to find out whether any of those dead people voted.

Digital Extra
Chart: A look at "excess" voters by town
The newspaper's review found no evidence of systematic fraud by people casting ballots in the names of voters who had died. But it did find a voter tracking system susceptible to error that could throw into doubt the results of close elections.

As an example, East Providence Mayor Joseph Larisa Jr. lost his at-large council seat to Isadore Ramos by less than 20 votes. But, the Board of Elections tallied more than 100 ballots that did not have a corresponding voter in the secretary of state's count, either in January or on Monday.

Robert Kando, executive director of the Board of Elections, attributed the discrepancies to errors in how voter tracking information was entered into the secretary of state's computer system. "I don't have the slightest inclination there was ballot stuffing."

Kando said that comparing the number of votes cast to the number of voters who checked in at each precinct is not part of the process of declaring the results of an election. "We certify winners without doing that. That doesn't mean we don't validate our system by examining that."

The process of tracking voters starts when they check in at the polls.

Before they receive a ballot, voters sign a poll book next to their name, address, date of birth and a unique bar code, like those used at checkout registers, that identifies the voters. After the election, canvassing clerks in each of Rhode Island's 39 cities and towns use a scanner to register the bar code of each person who signed the poll book. The result of the scanning is a voter history file, which records the date and type of election and the precinct in which a voter votes, plus whether the vote was in person or by mail.

If a clerk skips bar codes – individually or even a whole page of the poll book at a time – voters will not get credit for voting. Similarly, if a clerk scans the barcode next to a blank signature line, someone who did not vote will get credit for voting.

November's election was the first general election for which the poll book scanning system was used.

"This is really the first time out of the box," Kando said. "I believe there are still some bugs in the system, but that's to be expected."

Even so, Kando said he was disappointed to hear that the discrepancy between the Board of Elections and secretary of state is more than 2,000 voters.

"Despite our best efforts, we periodically make a mistake," he said. "There aren't going to be any perfect elections."

Kando and Janet L. Ruggiero, executive director of the secretary of state's Elections Division, said some local clerks may still be entering voter information six months after the election. That accounts for why the secretary of state's tally of voters rose between Jan. 16 and this week.

Kando conceded that, six months after the election, all of the voter information should have been entered.

The Journal's search for dead voters revealed several other ways that errors wind up in the voter history file:

Voters inadvertently sign on the line for someone else with a similar name.

Voters sign on the line above or below the one on which they are supposed to sign.

In one instance in Bristol, a voter signed the poll book twice, in two different boxes. Town Clerk Louis P. Cirillo said he does not believe the voter was given two ballots, but conceded he has no way to confirm that. The problem in Bristol was that Angelo C. Stanzione III and Angelo C. Stanzione both were registered to vote from addresses on State Street. Cirillo said it appears that Angelo III mistakenly signed the box for the older Angelo, then signed his own box without his first signature being crossed out. Although he was registered to vote in the last election, the older Angelo did not go to the polls because he's dead. He died in 1992.

In one precinct in Providence, the poll book – the only physical record of who voted – was lost before it could be scanned.

In that precinct, the state Board of Elections ruled that all 1,506 voters eligible to vote should be credited with voting, even though only 466 ballots were counted there. That means the secretary of state's count on Monday of how many people voted is artificially high because more than 1,000 people who didn't vote are recorded as having voted.

Kando said all the voters were given credit so that people who voted would not be declared inactive, a first step toward being removed from the voting list.

In its search for dead voters, The Journal compared the Death Master File from the U.S. Social Security Administration with the voter history file from the secretary of state's office. The Journal initially found 24 matches between the two files. Then, a reporter went to the cities and towns involved and examined the poll books for precincts in question.

A match was defined as a person's first name, last name and date of birth being identical on both lists. Plus, if a middle name was used on both lists, they had to be identical. If the middle name was missing on one or both lists, it would still be considered a match if the other parts matched.

In 10 of the 24 cases, the match was the result of dead voters being scanned, even though no one signed the poll book for that person.

Another five dead voters got credit for showing up at the polls because a legitimate voter signed in the wrong box.

Four of the 24 cases were false matches, where a live person with a common name – such as Mary Leonard – shared a birth date with someone who had died.

Another three initial matches were the result of people being erroneously included on the Social Security list.

That left a single instance, in Providence, where someone voted in place of a dead person.

Marcellino J. Cabral, who went by Popeye, died of cancer in 1989 at the age of 61. But someone voted in his name in November 2004 and November 2006, according to Providence records.

The city's Board of Canvassers has sent a letter to Cabral's son, Marcellino J. Cabral Jr., who goes by Butch, asking whether he can explain who has been voting in his father's name. Laurence K. Flynn, the board's executive secretary, said Butch Cabral has never been registered to vote in Providence. He said, depending on Cabral's response, the matter may be turned over to the state police.

The Journal left a telephone message for Cabral with a woman who identified herself as his mother-in-law. He did not return the call.

Ruggiero said the secretary of state's office will spearhead an effort to remove dead people from the voting rolls.

When The Journal first reported that nearly 5,000 names on the Social Security death list are registered to vote in Rhode Island, a spokesman for then-Secretary of State Matthew A. Brown said the secretary would obtain a copy of the list, and disseminate it to the cities and towns.

But Ruggiero said that has not happened. She cited the cost of the list; the federal government charges $1,725 for the file.

Ruggiero said her office will, instead, obtain a list of dead Rhode Islanders from the state Health Department as far back as computer records go, and update it on a monthly basis. Her office will make a similar effort to coordinate with the Department of Corrections to remove felons from the voting list.

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Texas
Voter records system too flawed, counties say

Voter records system too flawed, counties say

Concerned by registration woes in early voting, many want the state to get rid of it

Houston Chronicle
May 3, 2007
By HARVEY RICE and HELEN ERIKSEN

A $14 million centralized voting-records system used by 224 Texas counties has so many computer flaws that voter registration officials in many counties want the state to scrap it.

The system already has kicked registered voters' names off the lists during early voting that started Monday and forced others to wait as long as 10 minutes while the system verified voter registration. One of those left off the rolls was Prairie View Mayor Frank Jackson.

The system, intended to meet federal requirements for centralizing voter information statewide, has been plagued by so many problems since it began operating in January that some counties want out after the May 12 election.

"This particular system is just not working," said Galveston County Tax Assessor-Collector Cheryl Johnson, one of the most vocal critics of the Texas Election Administration Management System, or TEAM.

Said Harris County Tax Assessor-Collector Paul Bettencourt:

"This new database is causing statewide voting problems. ... It's a bad technology system coming home to roost."

Harris and 27 other counties foresaw problems with an untried system and never joined but still endure delays because they are required to update voter registration in the state system daily.

At least 17 jurisdictions started early voting Monday without current lists of registered voters, the secretary of state's office said.

Collin County Elections Administrator Sharon Rowe, who decided not to join TEAM, said it has taken as long as two weeks to input information for a single voter.

Information not recognized
Among the reported problems:

- Registration numbers for voters registered before Jan. 1 were changed and the old numbers erased from the system. This caused confusion this week during early voting in the Clear Lake school district election when the old numbers were not recognized by the computer.
- In Galveston County, TEAM would not allow officials to print new voter registration cards.
- TEAM kicked some voters off the rolls because it did not recognize the city of Galveston's unique system of using letters of the alphabet and fractions as street addresses.

TEAM replaces Texas Voter Registration System, an older system that many election officials want to return to. The old system included only officials involved in voter registration. TEAM is designed to also include officials who administer the election, who in many counties are different from those who oversee voter registration.

Three counties that began using the system in January – Bastrop, Kerr and Rockwall – have withdrawn from the system run by the Secretary of State's Office, office spokesman Scott Haywood said. Tarrant County commissioners will decide next week whether to withdraw and spend $700,000 for their own system, Tarrant County Elections Administrator Steve Raborn said.

"We want to get off-line because of the difficulties we have encountered," Raborn said.

The Web-based system developed by IBM and voting-machine maker Hart InterCivic of Austin was adopted to comply with the Help America Vote Act of 2002, enacted by Congress in reaction to uproar and allegations of fraud during the 2000 presidential election. The act requires each state to centralize its voter information.

Hart InterCivic, which provided the software, said in a statement that it is working with the prime contractor, IBM, to fix a complex system linking many databases. "Hart, along with everyone on the team, remains committed to work towards an efficient, cost-effective voter registration system for Texas that complies with federal law," the statement said.

IBM could not be reached for comment.

Candy Arth, president of the Tax Assessor-Collector Association of Texas, said many members are angry about TEAM. "They are ready to throw it out the window," Arth said.

Fear for their jobs

Arth, carrying a sheaf of complaints from tax assessor-collectors, met with Secretary of State Roger Williams two weeks ago to voice her membership's complaints.

One of those demands was that the Secretary of State's Office take the heat for all the problems. "We are elected and the people are going to throw us out of office because you won't take the hit for this," Johnson said about the demand.

Johnson outlined her complaints about the system in a March 26 letter to state legislators from Galveston County.

The letter said two full-time staffers were registering 25 voters per day with TEAM, compared with 100 to 150 per day before adopting the system. Other problems included inaccurate voter history and, "of grave concern, voter registration ID numbers have changed entirely and historical numbers are gone."

Williams' office said Wednesday that it would review the system after the May 12 elections. "At this point, it's not performing as well as it should," Haywood said. "Right now the main focus is on getting the counties the support they need – then we can evaluate the system after the election."

Williams sent a letter to counties using the system Wednesday apologizing for the extra burden it has placed on election staff.

"Having an unanticipated statewide election occur in conjunction with thousands of local elections has put TEAM to the test much earlier than most could have predicted. However, I do hope that the worst is behind us."

Andrea Gibbud, Bee County tax assessor-collector, said it took weeks for her office to get voter lists for early voting, but it will have barely more than 72 hours to get new lists for the May 12 election. She said voters calling in to find out where to vote must wait 10 minutes or longer while the computer grinds out the information.

A separate committee looked at the IBM-Hart InterCivic proposal and another by VOTEC, and narrowly recommended VOTEC, said committee member Danny Clayton, Dallas County voter registration supervisor. The IBM-Hart InterCivic bid was $13.9 million and the VOTEC bid $13.1 million, Haywood said.

Bettencourt said then-Secretary of State Geoffrey Connor overruled the committee and awarded the contract to IBM-Hart InterCivic. He said Connor allowed the vendor to substitute the system it sold to the state with another, untried system.

"I would have never picked a product that has not been proven to work," Bettencourt said. "Apparently, it was selected because of its future capability."

Connor could not be reached for comment.

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Texas
Harris County Uncovers Voter Fraud Plot

Harris County Uncovers Voter Fraud Plot

KPRC Houston
May 3, 2007

HOUSTON -- A plot to steal dozens of votes with a non-existent address has been uncovered, officials told KPRC Local 2 Wednesday.

Harris County Tax Assessor Paul Bettencourt said it was obvious to him that several voter registration applications were fraudulent.

"We know because all the handwriting is the same," Bettencourt said.

The applications all had the last names Williams or Johnson. They also had the address of 2519 Dashwood Drive, which does not exist.

Bettencourt said the applications were mailed from El Paso.

The tax assessor's office has received 51 applications so far and more keep coming in.

"Now we have to go through and find out who was trying to do this," Bettencourt said. "And we have to go back to El Paso."

Bettencourt said these types of cases are tough to catch on Election Day because they rely on the honor system, not photo identification. He said he would like to change that to protect voters.

"This type of fraud is used specifically against people in general elections," Bettencourt said. "It's used against people in primaries. It's not specific to any political party."

Bettencourt said voter fraud cases can be hard to make, but the Harris County District Attorney's Office recently successfully prosecuted a case.

Forging government documents is a felony.

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* Also included below is the weekly summary of election reform news and opinion that appears in *electionline.org* today. Focus on new EAC Spanish Language Glossary of Election Terms.

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----- Forwarded by Bryan Whitener/EAC/GOV on 05/04/2007 10:11 AM -----

[redacted] listadmin@electionline.org

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Please respond to listadmin@electionline.org

To bwhitener@eac.gov
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Subject electionline Weekly-- May 3, 2007

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I. In Focus This Week

New Spanish-Language Glossary Aims to Help Election Officials

First revision of glossary of voting terms since 1979

By M. Mindy Moretti
electionline.org

When is a member contribution not a member contribution? When in Cuban-Spanish it's an aportes de los miembros (masculine) and in Puerto Rican-Spanish it's a contribuciones de los miembros (feminine) and for other Spanish-speakers, it's an aportaciones de los miembros (feminine).

The last time a Spanish-language glossary of voting terms was produced - by the Federal Election Commission (FEC) in 1979 - there were approximately 11 million people in the United States who spoke Spanish as their primary language. The Language Minority Provision of the Voting Rights Act of 1965 requiring some jurisdictions to provide foreign-language voting information was four years old and only 16 jurisdictions in six states and two states in their entirety were required to provide voting information in Spanish.

Twenty-eight years later, there are approximately 31 million people in the U.S. who speak mainly Spanish at home, 65 jurisdictions in 15 different states as well as four states in their entirety are required to provide voting information in Spanish, and the U.S. Election Assistance Commission (EAC) has released a new and updated Spanish-language glossary of voting terms.

"We had an obligation to update this helpful tool for Spanish-speaking voters and the election officials who serve them, and I am very pleased to announce that we have gotten it done," EAC Chair Donetta Davidson said in a statement.

The EAC convened its first Language Working Group as part of the Language Accessibility Program in 2005. From that group - made up of local election officials, Congressional staff members, national advocacy groups as well as research and public policy organizations - came a variety of recommendations including the need to re-do the voting terms glossary.

From abandoned ballot (papeleta abandonada) to zoning regulations (normas de zonificacion) the glossary covers 1,843 terms and phrases used in the election process. That's more than double the number of terms that were in the FEC's 1979 glossary.

When compiling the list of terms, the contractor for the EAC consulted with members of the working group and with all the state election Web sites to see what terminology was frequently being used in the election world.

"So many words and terms simply didn't exist in 1979. There is a lot more technical language in the election field now," explained Edgardo Cortes, EAC election research specialist. "We went through six or seven revisions of the list to eliminate duplicate terms and terms that were too local."

Some localities, such as Los Angeles County, had their own Spanish-language glossary of elections terms. The EAC relied heavily on them for assistance with the new glossary.

"I think they [Los Angeles County] showed a lot of initiative in producing their own glossary," said EAC Vice-Chair Rosemary Rodriguez. "And they shared it freely not only with us, but with other jurisdictions as well."

Even though much has changed in the world of elections and some voting equipment or terminology may no longer be used on a daily basis, Cortes said no words, such as chad (perforacion), were eliminated because they still have historical context.

To ensure that translations were culturally and linguistically appropriate, terms were translated and reviewed by a multi-dialect team of translators representing four of the main regions of origin of the Hispanic population living in the United States - Mexico, Puerto Rico, Cuba and Central America.

And this is sometimes where they ran into problems and had to print multiple translations for one word or phrase, as was the case with member contribution. Although the translating of the glossary was done by an outside contractor, it was up to Cortes and another member of the EAC staff to make sure that those translations were accurate and culturally relevant.

"We had to make sure that we weren't doing literal translations," Cortes said. "One of the biggest complaints we heard during the working group was that they appreciated the effort being put forth by election administrators, but a lot of times the translation was done very literally and it didn't provide the same meaning."

But sometimes a word or phrase had to be literally translated. Such was the case with sip/puff tube for voters who are not able to use the touch screen or touch pad, which, translated is: tubo de succión/exhalación para electores queno pueden utilizar la pantalla táctil o la almohadilla táctil.

According to Cortes, so far the feedback on the new glossary of terms has been positive.

"We've actually gotten several emails from election officials and they are very excited about it," Cortes said. "We're getting lots of requests for printed copies, which should be available sometime late next week."

Next on the EAC agenda for translation are Pacific Rim languages including Chinese, Japanese, Vietnamese, Korean and Tagalog.

According to Rodriguez, the language working group is already in place for the next round of translations and the commission has reserved money in the FY07 budget to translate and produce a glossary in these other languages and hopes to have them in time for the 2008 election cycle.

After these translations are complete, Rodriguez said the Commission hopes to move on to translations for American Indian languages.

"It's going to be a big challenge, but it is on our work plan to try to attempt to produce a glossary," she said. "There are so many different dialects and Navajo, which is surely one we would attempt to do, is probably one the most complex languages in the world. We're really going to have to put our shoulders to the wheel when we tackle that."

II. Election Reform News This Week

- The U.S. Election Assistance Commission this week gave Florida permission to use previously allotted, but unspent, HAVA funds to purchase new paper-based voting machines. According to *The Miami Herald,* the decision came after a two-hour meeting with the EAC, which rejected the initial bid to tap federal money, but then told the state how to get the $28 million it asked for anyway. The state could secure the funds by reimbursing itself for the millions the state spent on new voting machines after the 2000 election. Julie Hodgkins, general counsel for the EAC, said Florida and its counties never reimbursed themselves for the full costs when they scrapped punch-card voting machines in 2000.
- Early voting began this week in Texas and a "glitch" with the state's new voter registration database was to blame for a series of problems voters encountered. Names of registered voters - including the mayor and mayor pro-tem of the city of Prairie View - did not appear on voter rolls as the polls opened for early voting on Monday. Scott Haywood, a spokesman for the Texas secretary of state told *The Houston Chronicle* that the agency received complaints from about 17 jurisdictions that did not get a complete report of registered voters for the May 12 elections. Haywood attributed the problems to technical setbacks in the Texas Election Administration Management System, a new state database that makes it easier to track people moving around Texas. He said the agency has made improvements to the system and all counties should have received a completed list by Tuesday.
- Vote centers debuted this week in Indiana to fairly good reviews. The two vote centers that opened in Richmond on Monday for early voting make up half of four centers in Wayne County that replace 31 precinct polling places. The other two vote centers will open on May 8. "I came out to support this new system and I love it," first-time voter

Sharon Brant told the *Palladium-Item* . "I think it's a great idea and I appreciate the convenience of it. Everything went great." Wayne County is the first in Indiana to vote using the format, which could be adopted statewide.

- Robert Diebold is running for office in Ohio, but the candidate has no interest in riding the voting-machine giant's coattails to victory. Diebold, a Republican candidate for mayor of Newark, has no connection to the Ohio-based company. But he was so concerned about his name being associated with the company that provides touch-screen voting machines to Licking County that he contacted the local elections board. "I would like my name not to be an issue," Bob Diebold told *The Columbus Dispatch* . "I would think that would be unfair. I wanted them to cover it up. I'd donate the duct tape." The county election board turned to Secretary of State Jennifer Brunner (D) for guidance and her staff told the county it could cover up the Diebold name on voting machines if it wanted to, but the county declined. Jay Morrow, director of elections for Liking County said that the candidate himself is the only one who has raised any concerns about the coincidence.

III. Opinion This Week

National: Vote fraud, II
California: Voting machines
Colorado: Vote by mail
Florida: Voting machines, II
Hawaii: Electoral College
Indiana: Vote centers
Louisiana: Voter registration
Pennsylvania: Poll workers
Texas: Voter ID, II
Wisconsin: Voter ID, II

Some sites require registration

IV. Job Postings

All job listings must be received by 12 p.m. Eastern on Wednesday for publication in our Thursday newsletter. Job listings are free but may be edited for length. Whenever possible, include Internet information. Please email job postings to mmoretti@electionline.org

ELECTIONS DIRECTOR - Navajo County, Ariz. Looking for a rewarding career while enjoying a relaxing country lifestyle? Navajo County and the White Mountains are for you! Navajo County is accepting applications for an Elections Director. This position is responsible for managing the Elections Department to include: planning, organizing and directing County wide elections; establishing policies, procedures and guidelines; ensuring voting and voting procedures are in compliance with Arizona State statutes; making public presentations; certifying results of elections; and developing and administering the department's budget. The successful candidate should have a Bachelor's Degree in Public or Business Administration, Political Science, or a closely related field; and three years of progressively responsible experience in conducting governmental elections, including one year in a supervisory or management capacity; **OR** equivalent combination of education, training and experience; and must pass the Arizona State Election Certification program. Salary range is $50,750 - $63,438 per year, depending on qualifications. Benefits include paid leave. Please submit a Navajo County application to: Navajo County Governmental Complex; Attn: Human Resources; PO Box 668; Holbrook, AZ 86025. Position description and application information available at www.co.navajo.az.us. EOE.

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electionline Weekly and *electionline.org ALERTS* are produced by the staff of *electionline.org*, a non-partisan, non-advocacy research effort of The Pew Charitable Trusts. More information about the Project and up-to-the-minute news on election reform throughout the week can be found at *electionline.org*.

Bryan Whitener/EAC/GOV
05/04/2007 04:57 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject Weekly News - Elections & Voting (4-28 to 5-4-07)

Commissioners:

Included below are links to other articles and opinion on elections and voting that have posted over the past week.

##########

National
Attorneys Scandal May Be Tied to Missouri Voting
All Things Considered, May 3, 2007 - The Justice Department's push to remove U.S. attorneys in 2006 might have been larger than the eight cases that have been discussed in Congress. Other U.S. attorneys' names were on a list the agency compiled in January 2006 – the prosecutor who replaced one of them was the first to be named under the Patriot Act.

Rep. Susan Davis introduces bill requiring postage-paid absentee ballots
Rep. Susan Davis (D-Calif.) will introduce a bill this week to make absentee ballots postage-free for voters.

California
Voting system maker fields Riverside County's security questions
Survey: What, if anything, should be done to improve the security of ballots in Riverside County? Sequoia Voting Systems representatives said Wednesday that they welcome Secretary of State Debra Bowen's rigorous review of voting technologies in use by California counties. Ed Smith, vice president of quality, certification and compliance for Sequoia, told Riverside County's election review panel that the company has turned over its equipment and source codes to Bowen's office for testing.

Connecticut
Bill opening primaries to some 17-year-olds stalled
A bill that would have paved the way for 17-year-olds to vote in state primaries was dealt a two-year setback yesterday in the House of Representatives. Secretary of the State Susan Bysiewicz and most lawmakers supported the bill, but it fell nine votes shy of the 114 needed to place it on the 2008 ballot.

Florida
Help wanted: Bilingual poll workers
Supervisors of elections statewide say they need to recruit more bilingual poll workers to help Spanish speakers vote."It is difficult to recruit bilingual poll workers," Palm Beach County Supervisor of Elections Arthur Anderson said. "There is a section of our population that hasn't been adequately empowered."

Touch-screen voting on way out, but millions still owed
The Legislature voted Thursday to trash the ATM-style devices in favor of paper ballots. Miami-Dade County's $24.5 million experiment in touch-screen voting is over -- but payments for 7,250 soon-to-be banned machines are not. Local taxpayers still owe $14 million for the devices, with payments that stretch out over the next five years.

Ballot Change Worries Supervisors
TALLAHASSEE - The next evolution in Florida's ever-changing system of voting will feature something called "ballot on demand." A citizen at any early voting site would receive a custom optical scan ballot,

matching the voter's residence, language and party affiliation. A voter's choices would be marked on an optical scan ballot by filling in an oval next to each ballot question.

Indiana

Randolph officials hope votes can be counted

Will the third time be the charm for Randolph County's election tabulation equipment? During the equipment's first two uses, the 2006 primary and general elections, Randolph County residents went to bed without knowing the winners of either election. Last spring, a computer crashed on election night, and in November, the tabulation software didn't accurately add results. Since then, the equipment vendor has gone out of business amid problems in Indiana and beyond. Now, a former employee of Voting Technologies International is working with the county to make sure Tuesday's election can go on.

Branches extend hours for voter IDs

MUNCIE -- The Indiana Bureau of Motor Vehicles will have extended hours Monday and Tuesday at all license branches to allow for the issuance of state-issued photo identification cards and driver licenses for next Tuesday's primary election. Registered voters are required to provide valid photo IDs at the polls.

Richmond test aims to boost voter turnout

Opening vote centers a week before primary is 1 experiment among many across U.S. Heading into what promised to be another low-turnout primary election, Richmond residents are trying something new this week. Officials have put aside the traditional precinct system in Wayne County this spring and replaced it with what they call vote centers.

Can't make it Tuesday? At least two centers will be open from 10 a.m. to 7 p.m. this week. Two additional centers will open their doors Tuesday for voters more bound by tradition.

Kansas

Time runs out on voter ID bill

TOPEKA - The clock ran out Wednesday on a bill requiring most Kansans under age 65 to show photo identification to vote. Lawmakers adjourned their wrap-up session without approving voter ID legislation, despite recent indications that a majority of lawmakers could favor the change. "We just ran out of time," said Senate elections chairman Tim Huelskamp, R-Fowler, a primary proponent of the new rules. The lack of action on voter ID also doomed plans to expand early voting options for citizens. Senators wedded the two measures together earlier this session.

Mississippi

Register to vote at casino

The Silver Slipper Casino is sponsoring a voter-registration drive on Saturdays during the month of May. "So many people have been displaced they may not be aware of the fact if their address has changed, they need to register to vote again," said John Ferrucci, the casino's general manager. "We want to make them aware of that and make it easy for them and reward them with a Silver Slipper T-shirt."

Ohio

Changes at troubled Ohio elections board to get first test

CLEVELAND - The elections board in the state's most populous county, heading into next week's primary with rookie members and a troubled image, has put new procedures in place that officials say will improve elections and restore public confidence. "There is significant importance to this election and how we conduct this election," Jane Platten, interim director of the Cuyahoga County Board of Elections, said Thursday at a media briefing on the more than six weeks of preparation done for the primary.

Texas

Registrars Urging Data System Recall; Smith County Not Included

Voter registrars around Texas are urging the state to abandon a $14 million computer system for storing voter information, saying it is causing massive delays for election administrators all over the state. All but 30 of Texas' 254 counties use the database, called the Texas Election Administration Management system. Smith County does not use the TEAM system.

Senate Showdown Likely Over Voter ID
A clash between Democrats and Republicans over what form of identification Texans must show to cast a ballot is heading toward a Senate showdown, and an ill Democrat appears to hold the pivotal vote.

Washington
New Elections director for King County
Sherril Huff has been named the new director of the King County Records, Elections and Licensing Services Division. Huff, who was twice elected as Kitsap County auditor, has served as King County's assistant director for the division since February 2005. County Executive Ron Sims announced her appointment last week. The King County Elections Division has been at the center of controversies including timely mailing of absentee (now mail-in) ballots and vote counting since 2003. It was the focus of statewide attention during recounts of ballots in the 2004 governor's race between winner Chris Gregoire, a Democrat, and Republican hopeful Dino Rossi. The King County Council has taken steps to improve the ballot-tabulation process since the 2004 election.

##########

Bryan Whitener/EAC/GOV
05/09/2007 10:47 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (5-9-07, Wed)

Commissioners:

The following items are in the news.

##########

National
- Agency Affirms Mandates for Driver's Licenses (DHS & Real ID)
- States' rebellion at Real ID echoes in Congress (Final rules for Real ID are due later this summer)
- Effort to Ban Paperless Voting Machines Advances Out of House Administration Committee (PFAW press release)
- Holt Election Reform Bill Passes Out of Committee, People for the American (PFAW) Still Misleading Public About It (Brad Friedman goes after PFAW)
- Politics could cloud election panel's work (Senate battle set; confirmation comes due for each of the six FEC commission spots)
- Panel Approves Bill Requiring Paper Receipts (Congress Daily)
- Testimony requested on U.S. attorney firings (Senate cmte. wants info on voter fraud efforts.)

North Carolina
- Demos Report Highlights North Carolina's Compliance with National Voter Registration Act

Ohio
- Man Accused Of Voting In 2 Counties

Rhode Island
- House approves bill 'preregistering' voters (16-year-olds)

##########

National
Agency Affirms Mandates for Driver's Licenses (DHS & Real ID)

New York Times
May 9, 2007
By MATTHEW L. WALD

WASHINGTON, May 8 – The Homeland Security Department said Tuesday that it would plow ahead with national standards for driver's licenses, despite a highly unusual level of activity by state legislatures opposed to the idea, and substantial second thoughts in Congress.

The department said it had received about 12,000 public responses to its draft rules, in a 60-day comment period that ended Tuesday. Russ Knocke, a spokesman, said the comments were mixed.

Comments at a Senate Judiciary Committee hearing Tuesday were more negative. The chairman, Senator Patrick J. Leahy, Democrat of Vermont, complained that security rules were supposed to be "smart as well as tough" and predicted that state motor vehicle departments would not be able to cope with the requirements, which include verifying all documents presented by applicants. Even renewals will require birth certificates or other proof of legal residence. And the change will impose billions of dollars in costs on states and localities, Mr. Leahy and others said.

Mr. Leahy, who is a sponsor of a bipartisan bill to repeal the rules before they take effect, asserts that the department cannot even safeguard the personal information of its own employees. (Recently the department acknowledged that it had released the names and Social Security numbers of thousands of employees, including undercover sky marshals.)

According to the National Conference of State Legislatures, which has a clock on its Web page counting down the time until the law's requirements take effect (368 days as of Tuesday), Washington and Montana have enacted laws pledging not to comply. In Idaho, the Legislature passed, and the governor signed, a budget specifying that expenditures for carrying out the law next year would be zero. Resolutions opposing the new licenses have been passed by one or both houses of the legislature, and in some cases signed by the governor, in Arkansas, Arizona, Colorado, Hawaii, Michigan, North Dakota and Utah.

Carl Tubbesing, deputy executive director of the conference, said, the actions of legislatures was "without precedent in the last 20 years."

But Mr. Knocke, the spokesman for the Homeland Security Department, predicted that reluctant states would come around because people would demand it. Without the standardized licenses, they would need a passport to board an airliner, he said.

"Residents of non-Real ID-compliant states are going to displeased with their leadership," he said.

While states have mostly complained about costs, others have raised privacy objections. The American Civil Liberties Union said Tuesday that the system as laid out by the Bush administration "streamlines identity theft."

There was some support for the license plan at the hearing. Janice L. Kephart, former counsel to the Sept. 11 commission, pointed out that Ziad Jarrah, a hijacker of United Flight 93, which crashed in Pennsylvania, had been stopped for speeding two days before the Sept. 11 attacks and gave the police officer one of the two Florida driver's licenses he was carrying. If the nation had a system that limited applicants to a single license, the authorities would have had a better chance of catching him, she said.

The law requires the states to begin issuing the standardized licenses by next May, but the department can issue extensions through Dec. 31, 2009. All licenses are supposed to be compliant by May 10, 2013.

##########

National

States' rebellion at Real ID echoes in Congress (Final rules for Real ID are due later this summer)

Stateline.org
By Eric Kelderman
Stateline.org Staff Writer
May 8, 2007

Two states leading a revolt against the Real ID Act have picked up new firepower in the U.S. Senate in their fight to roll back an unprecedented federal overhaul of state driver's licenses.

Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) is now spearheading an effort in Congress to undo the 2005 law that will require states to verify the identity of all 245 million licensed drivers and impose a common set of security features on license cards. Leahy, who can use his post to push legislation to the Democratic-controlled Senate, has signed on to a bill to repeal the Real ID law and revive a previous state-federal partnership effort to make driver's licenses more secure. A bill in the U.S. House, also now in Democratic hands since the 2006 election, has attracted the support of 25 co-sponsors.

"While the federal government dictates responsibilities for what has traditionally been a state function – and adding layers of bureaucracy and regulation to effectively create a national identification card – there is no help in footing these hefty bills," Leahy said at a May 8 Judiciary Committee hearing.

Driving the momentum in Congress, Montana and Washington state last month passed nearly unheard-of statutes rejecting the federal law, which they charge will infringe on their residents' privacy and saddle states with a $14 billion unfunded mandate. More than 30 other states have taken up similar bills or resolutions calling on Congress to repeal Real ID or fully fund it.

Pietro Nivola, a scholar on federalism with the Brookings Institution, said states have wrestled with mandates from Washington, D.C., since President John Adams' tenure but rarely have passed laws defying Capitol Hill. In 1798, legislatures in Kentucky and Virginia passed resolutions declaring a right to nullify federal statutes – a protest against laws cracking down on immigrants as the country prepared for war against France. One of those laws was repealed 1802 after a new majority party took over in Congress, but the other three were allowed to expire.

Instead, states often have used the courts to test the bounds of Congress' reach. For example, the U.S. Supreme Court granted states immunity from lawsuits by their employees under the 1990 Americans with Disabilities Act. In extreme cases, such as the U.S. Supreme Court's 1954 order to desegregate schools, many Southern states simply ignored the mandates until forced to comply by federal troops or the U.S. Justice Department.

More commonly, as with a federal law stiffening drunken-driving enforcement, states have dragged their feet until the threat of losing federal funds made them toe the line. Delaware, for example, waited nearly a decade to adopt Congress' 1996 mandate setting a .08 percent blood-alcohol content, but acted in time to save $3.3 million in transportation funding.

Money also has been the carrot keeping states from outright rejecting President Bush's No Child Left Behind education law, which state lawmakers across the political spectrum also have challenged as an unfunded mandate and an intrusion on traditional state control of schools.

Nearly half of the states and several local school districts, most recently in Virginia, have threatened to abandon the law, which requires annual testing in reading, math and science and penalizes schools that miss progress goals. But no jurisdiction has flatly repudiated the act because they would have to forfeit federal money, which accounts for about 8 percent of public education funding. A Connecticut lawsuit that sought to overturn the law failed in September 2006.

Like the No Child Left Behind Act, Real ID has sparked outrage from liberals and conservatives alike. They condemn the law's costs, federal pre-emption of state practices and potential threat to personal privacy.

The difference with Real ID is that Montana and Washington won't forfeit a dime in federal money by rejecting the act, which Congress attached without debate to a 2005 bill funding the war in Iraq and Asian tsunami aid. Passage of the law halted negotiations between the states and the federal Department of Transportation on new driver's license security standards to fulfill recommendations of a task force studying the terrorist attacks of Sept. 11, 2001. Both the U.S. Senate and U.S House bills would revive that process.

The penalty if states do not conform to the act is that their citizens will not be able to use their driver's licenses for federal identification purposes, such as boarding an airplane or entering a federal building.

Richard Barth, an assistant secretary at the federal Department of Homeland Security , told state legislators at an April meeting that Real ID was designed to be voluntary and not tied to federal funds because that could make it unconstitutional.

Under Real ID, states will have until 2013 to reissue all driver's licenses, beginning next May or at the end of 2009 if a state asks to extend the deadline. License holders will have to renew their licenses in person and show a form of photo identification and documents proving their date of birth, Social Security number and address.

The National Conference of State Legislatures is asking the homeland security department to allow states 10 years after Real ID rules are finalized to reissue existing licenses and to decrease costs by exempting military personnel and others with federal identification from the rigid screening process.

The federal homeland security department has estimated that Real ID will cost states $14 billion. Although Congress has appropriated $40 million to meet the law's requirements, homeland security officials have clarified that amount will be given out as grants to develop best practices. States also would be allowed to use 20 percent of their federal homeland security grants, but state officials point out those funds are already dedicated.

Final rules for Real ID are due later this summer.

Comment on this story in the space below by registering with Stateline.org, or e-mail your feedback to our Letters to the editor section at *letters@stateline.org.*
Contact Eric Kelderman at: ekelderman@stateline.org.

Related stories:
Two states lead revolt against Real ID
Real ID deadline delayed
Too little time, too much cost for Real ID
Congress sets new driver's license rules
States balk at license bill as it heads to U.S. Senate
Driver's licenses to face new federal standards
Driver's licenses now a tool for homeland security
States slow to give driver's licenses to illegal alien

##########

National
Effort to Ban Paperless Voting Machines Advances Out of House Administration Committee (PFAW press release)

Holt Bill Would Fix Voting Machine Problems before Next Presidential Election, Prevent another Sarasota

For Immediate Release: 5/8/2007
Contact: Stacey Gates or Josh Glasstetter
People For the American Way
email: media@pfaw.org
phone: 202-467-4999

Voting rights advocates scored a significant victory today when legislation addressing voting machine problems advanced out of the House Committee on Administration by a 6 to 3 vote.

The Voter Confidence and Increased Accessibility Act (H.R. 811), would ban paperless voting machines and require all voting to either be done directly on paper, or on machines that produce voter-verifiable paper ballots and meet strict security and auditability requirements. It is sponsored by Congressman Rush Holt (D-N.J.).

People For the American Way President Ralph G. Neas praised today's development and urged the Congress to quickly consider the legislation on the House floor.

"In November, 18,000 votes went missing on voting machines in Sarasota County, Florida. If voting machine problems are a sickness, the Holt bill is good medicine. We must make every effort possible to ensure that an injustice like Sarasota never happens again," Neas said. "This bill will end paperless voting –period. It will make paper ballots the norm, and impose strict new requirements on all voting machines to ensure they are accurate, reliable, accessible and secure. We urge the full House to pass this legislation quickly, so its reforms can be implemented in time for the 2008 presidential election."

Republican leaders in the House Committee on Administration introduced 12 amendments, including an egregious photo identification provision that would potentially disenfranchise millions of voters. All 12 amendments failed.

"What we saw at today's mark-up was a last-ditch effort to rehash this misguided voter fraud debate that only serves to limit access to the ballot of certain communities, and does little to nothing to secure the ballot," Neas said.

People For the American Way is one of the nation's leading advocates of federal election reform. The organization worked with Congressman Holt's staff as the legislation was drafted, and public policy director Tanya Clay House testified on the legislation before the House Administration Committee.

The Holt bill already has more than 200 co-sponsors in the House, and a broad array of voting rights, civil rights and progressive organizations supporting it. In addition to People For the American Way and People For the American Way Foundation, Holt bill supporters include Common Cause, MoveOn, SEIU, the National Education Association, the Brennan Center, the Lawyers Committee for Civil Rights Under Law, Vote Trust USA, Verified Voting, and prominent voting technology experts Avi Rubin and Ed Felten.

For more information about the Holt bill, visit http://www.pfaw.org/go/fixingthemachines. Click here to see our letter to the House Administration Committee in support of H.R. 811.

##########

National

Holt Election Reform Bill Passes Out of Committee, People for the American (PFAW) Still Misleading Public About It (Brad Friedman goes after PFAW)

Advocacy Group's Press Release Disingenuously Continues to Forward Unsupportable Notion that Bill Would Have Prevented Sarasota's FL-13 Election Meltdown

Brad Friedman
Brad Blog
May 8, 2007

Legislation Still to Allow for Uncounted and Uncountable Electronic Ballots on Touch-Screen Voting Systems...

[1]Rush Holt's Election Reform Bill (HR811) [2] was successfully voted out of the U.S. House Administration Committee today after a four hour mark-up session. We'll have analysis of the bill in the coming days as we are able to review a copy of the final version which is now headed to the House floor. We have been told that electronic balloting on Direct Recording Electronic (DRE) touch-screen systems will continue to be allowed in the bill.

Apparently, a paper ballot --- one that is actually counted --- for every vote cast in America is of little interest to either the Democratic and Republican members of the committee.

See our Holt Bill Special Coverage Page at http://www.BradBlog.com/Holt [3] for much more information and action points concerning the bill.

First out of the box to trumpet today's "triumph", naturally, was the bill's top supporter, the public advocacy group, People for the American Way [4] (PFAW). They had a press release good to go before the ink even dried on the dangerous new version of the bill (which, we should add, does include both *some* improvements to the initial version, along with several watered down provisions as we've been told...but we'll wait until we actually *read* it before commenting further on any of that.)

For now, however, we have little choice but to characterize the tactics used by PFAW in their press release as **despicable**, while they continue to knowingly mislead the American people about what the Holt bill will and won't do. (*Their press release is posted in full at the end of this article.*) This group knows better, and yet, they are doing it anyway.

PFAW can be reached at:
pfaw@pfaw.org [5]
202-467-4999 or 800-326-7329
2000 M Street, NW, Suite 400
Washington, DC 20036

We can do little else at this point other than to recommend any donors to their organization cease supporting them immediately, and otherwise let them know exactly why. Their dangerous, disingenuous support for this dangerous and disingenuous bill is *counter* to the best interests of Election Reform and Integrity in America. Worse still, PFAW --- who has openly lobbied *in favor* of the use of dangerous, disenfranchising, hackable touch-screen DRE systems, claiming they are preferable to paper-based optical-scan systems [6] --- is willing to lie about facts in order to see the bill move forward...

Here's one example from their press release, misleadingly headlined from the start, claiming erroneously that: "Holt Bill Would Fix Voting Machine Problems before Next Presidential Election, Prevent another Sarasota"

It's the "Prevent another Sarasota" that gets our ire up the most. Given that *they know damn well* that what happened in Sarasota's U.S. House in Florida's 13th district between Vern Buchanan (R) and Christine Jennings (D) would *not* have been avoided by the bill's requirement to ensure uncounted "paper trails" on DRE touch-screen systems. Such systems disallow *any* human being to *ever* verify their vote before it is cast and counted by the voting system.

The Holt Bill disingenuously refers to those "paper trails" as "paper ballots" when both Holt himself, and certainly the PFAW bunch, know that that language in the bill is purposely misleading to members of Congress, to the media and to the public at large.

Says PFAW's Executive Director, Ralph Neas in the release, despite knowing he's misleading those who have come to trust PFAW as one of the "good guys" up until now:

> "In November, 18,000 votes went missing on voting machines in Sarasota County, Florida. If voting machine problems are a sickness, the Holt bill is good medicine. We must make every effort possible to ensure that an injustice like Sarasota never happens again," Neas said. "This bill will end paperless voting - period. It will make paper ballots the norm, and impose strict new requirements on all voting machines to ensure they are accurate, reliable, accessible and secure.

Neas well knows --- because we personally discussed it at length with him, several of his top staffers working on this matter at PFAW, and even PFAW's founder Norman Lear --- that "paper trails" on the paperless touch-screen voting machines used in the FL-13 election would likely have made *no difference whatsoever in the outcome of that election*!

In that election, some 18,000 voters failed to either notice and/or change their recorded "undervote" when it likely appeared in front of their very face on big touch-screen machine. And yet, virtually every computer scientist and/or voting system expert we've discussed this matter with has confirmed that having such a results subsequently printed on a tiny piece of paper would have made *any* difference at all in the final recorded outcome.

The only difference it would possibly have made is that Jennings' contest of the election would likely have been dismissed by now on the grounds that "those paper trails you guys insisted on, *confirm* that 18,000 voters *decided* not to vote in that race, so case dismissed!"

PFAW also knows better because they are one of four groups sponsoring the legal challenge to the FL-13 election. Another one of the groups on the legal team is VoterAction.org [7], who has responsibly opposed the bill as originally written due to its allowance for the use of DRE voting systems.

The press release describes PFAW as "one of the nation's leading advocates of federal election reform." They are indeed. Unfortunately, they are advocating for "reform" which will likely be as bad, or arguable worse, than our current dysfunctional system in a number of ways. Worse because, among other reasons, the bill institutionalizes touch-screen voting in America with a Democratic (big "D") stamp of approval.

The Help America Vote Act (HAVA) of 2002, which began all this madness, could well have been laid to blame at the feet of now-imprisoned Ohio Republican Rep. Bob Ney, who was its lead sponsor/author in the House back then. If this bill passes the full House and then Senate and becomes known as HAVA II by the time 2008 rolls around, the Democrats will have nobody to blame but themselves. And PFAW.

One more thought: The PFAW statement also claims VoteTrustUSA [8] as one of the supporters of the bill. That, despite repeated claims to us and others, by VT's co-founders Warren Stewart and Joan Krawitz, that they have not endorsed the bill. They have been big supporters of it, however, even while many members of their national coalition of Election Integrity groups have either opposed the bill outright or otherwise rallied against a number of the provisions in the bill --- including the allowance for the use of touch-screen DRE voting systems.

With "supporters" of election integrity the likes of PFAW and VoteTrustUSA, it's little wonder that we will continue to have electoral meltdowns such as those we saw in 2004, and week after week in 2006, for many more years to come.

That's not all the bad news out of the House Administration Commitee today, but more on that to come shortly.

PFAW's shameful press release follows in full below...

> For Immediate Release: May 8, 2007
> Contact: Stacey Gates or Josh Glasstetter
> 202-467-4999 / media@pfaw.org [9]
>
> Effort to Ban Paperless Voting Machines Advances Out of House Administration Committee
>
> *Holt Bill Would Fix Voting Machine Problems before Next Presidential Election, Prevent another Sarasota*
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"What we saw at today's mark-up was a last-ditch effort to rehash this misguided voter fraud [10] debate that only serves to limit access to the ballot of certain communities, and does little to nothing to secure the ballot," Neas said.

People For the American Way is one of the nation's leading advocates of federal election reform. The organization worked with Congressman Holt's staff as the legislation was drafted, and public policy director Tanya Clay House testified on the legislation before the House Administration Committee.

The Holt bill already has more than 200 co-sponsors in the House, and a broad array of voting rights, civil rights and progressive organizations supporting it. In addition to People For the American Way and People For the American Way Foundation, Holt bill supporters include Common Cause, MoveOn, SEIU, the National Education Association, the Brennan Center, the Lawyers Committee for Civil Rights Under Law, Vote Trust USA, Verified Voting, and prominent voting technology experts Avi Rubin and Ed Felten.

For more information about the Holt bill, visit http://www.pfaw.org/go/fixingthemachines [11]. Click here [12] to see our letter to the House Administration Committee in support of H.R. 811.
###

Take action to amend the Holt Election Reform Bill!

DEMAND A BAN ON DRE TOUCH-SCREEN VOTING!

- Email Congress! [13]
- Call you members! [14]

See www.BradBlog.com/Holt [15] for more details, coverage, talking points & information on all of the above!

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[4] People for the American Way: http://www.pfaw.org/pfaw/general/
[5] pfaw@pfaw.org: http://www.bradblog.commailto:pfaw@pfaw.org
[6] claiming they are preferable to paper-based optical-scan systems: http://www.bradblog.com/?p=4394
[7] VoterAction.org: http://VoterAction.org
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[11] http://www.pfaw.org/go/fixingthemachines: http://www.pfaw.org/go/fixingthemachines
[12] here: http://media.pfaw.org/PDF/capitolhill/2007-05-08-Holt-legislation.pdf
[13] Email Congress!: http://capwiz.com/pdamerica/issues/alert/?alertid=9406781&type=CO
[14] Call you members!: http://www.votersunite.org/takeaction/ban-e-ballots.asp
[15] www.BradBlog.com/Holt: http://www.BradBlog.com

##########

National
Politics could cloud election panel's work (Senate battle set; confirmation comes due for each of the six FEC commission spots)

Boston Globe
By Charlie Savage
May 9, 2007

WASHINGTON -- The six-person Federal Election Commission, which enforces campaign-finance laws, is entering the presidential election season with three temporary commissioners who have not been confirmed by the Senate, two commissioners whose terms have expired but who have not been replaced, and one vacancy.

As a result, most of the commissioners who are now passing judgment on campaign-finance fights will also be looking ahead to their own confirmation battles -- a process that threatens to intensify the politics surrounding an agency that was set up to resolve disputes over election rules in a bipartisan manner.

"This is symbolic evidence of how dysfunctional this agency is, when there is not one commissioner serving today under the normal process for appointing and confirming federal officials," said Fred Wertheimer , president of Democracy 21, a group that has frequently criticized the commission as failing to take sufficient steps to reduce the influence of money in politics.

The failure to confirm new commissioners is the result primarily of tie-ups in the Senate, where members of both parties have threatened to use the confirmation process to revisit controversial campaign-finance laws, according to congressional aides. Senate leaders, seeking to avoid a distracting battle, quietly allowed President Bush to make the temporary appointments while Congress was in recess.

Next month, however, Senator Dianne Feinstein , a California Democrat and new chairwoman of the Senate Rules Committee, plans to hold a hearing on the possibility of confirming four of the commission members.

They include the members who were given recess appointments in January 2006 -- Republican Hans von Spakovsky and Democrats Robert Lenhard, and Steven Walther -- along with Republican David Mason , whose six-year term expired in 2003, but who stayed on as a holdover and has now been nominated for a second term by Bush.

Election-law observers say they will be closely watching the hearings, which represent the first attempt by the Senate to confirm the agency's commissioners in seven years. But few are optimistic that the process will go smoothly. Senate procedures allow lawmakers of either party to block the agency's nominees whom they oppose, prompting retaliatory blocks by members from the other party.

Some of the anticipated fights are partisan. Democrats are expected to question von Spakovsky about his prior work as a voting-rights lawyer in the Justice Department's Civil Rights Division, when it approved a Texas redistricting map that favored Republicans. The map was later ruled illegal by the Supreme Court.

Other anticipated fights are ideological and cross party lines. Senators who support broad restrictions on campaign spending -- including John McCain, Republican of Arizona and Russ Feingold, Republican of Wisconsin -- have clashed with lawmakers who say that campaign-finance limits are a violation of free speech.

"If gridlock blocks the appointments from going forward, that is a sign that the debate over the policies that this commission deals with has broken down, and we can't see the end resolution," said Edward Foley , an election law specialist at Ohio State University.

Congress established the Federal Election Commission in 1975 amid a wave of post-Watergate reforms intended to end corruption in the political process. The agency is charged with making regulations to enforce federal election laws, including limits on campaign donations and the disclosure of donors.

To ensure that its actions are bipartisan, the agency is supposed to have three Republicans and three Democrats. Congressional leaders usually recommend potential appointees to the president, though he has final discretion.

Campaign-finance activist groups have accused leaders of both parties of choosing commissioners who are reluctant to restrict the flow of political money. The agency also often deadlocks with 3 -to- 3 party line votes, and thus takes no action on complaints about alleged violations of election laws.

Such disputes intensified after the passage of the McCain-Feingold campaign finance law in 2002. It banned political parties from spending so-called "soft money" -- unrestricted money donated by corporations, labor unions, and wealthy individuals -- to influence elections.

But during the 2004 election, such "soft money" instead flowed to independent groups, including the liberal MoveOn.org and the conservative Swift Boat Veterans for Truth. Campaign-finance activists urged the commission to use its powers under election law to force all such groups to obey donation limits and disclosure rules. But the commission refused to make such a rule.

Fallout from the agency's decision in the dispute led to the three recess-appointments, Senate aides say. Party leaders on both sides of the aisle wanted to avoid a protracted fight with lawmakers such as McCain and Feingold over their choices for the agency. So Bush quietly made the appointments in January 2006 while Congress was in recess.

Another Senate-confirmed commissioner resigned in March, and the regular term of the last Senate-confirmed member of the agency, Democrat Ellen Weintraub , ended on April 30 . She is still serving as a holdover, awaiting the nomination and confirmation of a successor.

The commission's spokesman, Bob Biersack, said the problem of unconfirmed commissioners has not affected the agency's work. In recent months, he pointed out, the agency has collected hundreds of thousands of dollars in fines, mostly related to violations during the 2004 election. "It's true that it's unique in our history that we've been in this situation with all six seats" awaiting confirmation, he said. "But people carry on."

However, if the Senate fails to confirm any of the agency's commissioners this year, the three recess-appointed members will have to step down in December. For the agency to function, Bush would have to install four new temporary commissioners who would have to learn the process as major campaign issues for the 2008 election are heating up.

"There is a problem when there is a lot of turnover, because there is a learning curve associated with what's going on," said Richard L. Hasen , an election law specialist at Loyola Law School Los Angeles. "It's certainly a problem to have a lot of new commissioners coming in just as the 2008 election comes up."

##########

National
Panel Approves Bill Requiring Paper Receipts (Congress Daily)

Congress Daily
GOVERNMENT OPERATIONS
May 9, 2007

The House Administration Committee Tuesday passed a comprehensive electoral reform bill, 6-3, over Republican assertions that the bill would impose unnecessary rules on state election boards.

"I favor the concept of the bill, but the burden placed on states is unmanageable," House Administration ranking member Vernon Ehlers, R-Mich., said.

The measure would require paper records of votes cast on electronic machines. The bill requires states to adjust to the new rules by the 2008 presidential election.

Ehlers accused Democrats of attempting to rush the measure through without substantive debate.

A substitute amendment by Ehlers to extend the timetable was rejected. His proposal would have given states until 2010 to upgrade their systems.

The legislation amends the Help America Vote Act, which was signed into law in 2002 in response to the contested 2000 presidential election. The HAVA law created the Election Assistance Commission and established minimum standards for all elections.

The bill follows up on that law by creating the paper trail requirement and authorizing routine inspections of the software used for electronic voting systems. The measure bans conflicts of interest between election officials and vendors that sell voting machines, and requires paper ballots be available to voters whose primary language is not English.

A substitute amendment by Rep. Zoe Lofgren, D-Calif., which was the measure reported out of committee, authorizes $1 billion for FY07 for payments to states to meet the new voting system requirements. That amount is a substantial increase from the $300 million authorization included in the original bill.

"What is at stake is whether we have another unverifiable election, possibly a presidential election," Lofgren said. "We don't have time for that." By Jessica Brady, with Michael Martinez contributing

##########

National
Testimony requested on U.S. attorney firings (Senate cmte. wants info on voter fraud efforts.)

A Senate committee wants a former U.S. attorney in KC to discuss voter fraud efforts.

By DAVID GOLDSTEIN and GREG GORDON
The Kansas City Star
May 8, 2007

WASHINGTON | The Senate Judiciary Committee wants to ask a former U.S. attorney in Kansas City whether the reluctance by some U.S. attorneys to pursue voter fraud cases played a role in their firings.

The committee, which has been investigating the dismissals of eight U.S. attorneys, asked Bradley Schlozman to appear voluntarily and describe his activities first as a senior civil rights official and later as a U.S. attorney for Kansas City. Schlozman was a U.S. attorney in Kansas City for one year.

While U.S. attorney in Kansas City, Schlozman pursued voter registration and voter fraud cases.

In his post in the U.S. Civil Rights Division, Democratic critics charge, Schlozman backed state laws that toughened voter identification requirements and hired lawyers based on their political affiliations. As a result, they say, Democrats were pushed aside and replaced with Republicans unfriendly to voter access litigation.

According to critics, those actions put Schlozman at the center of efforts to suppress voter turnout, particularly by Democratic-leaning minorities, as the 2006 congressional election approached.

In a letter to Schlozman on Monday, the Judiciary Committee chairman, Sen. Patrick Leahy of Vermont, and ranking member Arlen Specter of Pennsylvania, wrote: "We believe the committee would benefit from hearing directly from you in order to gain a better understanding of the role voter fraud may have played in the administration's decisions to retain or remove certain U.S. attorneys."

Meanwhile, the Justice Department said it would not try to prevent Congress from granting immunity to White House liaison Monica Goodling if she testifies before a committee.

Investigators initially wanted to determine whether U.S. attorneys were fired for political reasons. The inquiry has since branched off into a investigation of whether partisan and ideological litmus tests were used to hire some assistant U.S. attorneys and career lawyers.

Schlozman was unavailable for comment Monday. Justice Department spokesman Dean Boyd said the department had received the committee's letter and was reviewing it. In a statement, Boyd said that the agency enforces the law "based on evidence, not partisan politics," and that U.S. attorneys are expected to bring "election and voter fraud cases where evidence of such fraud exists."

But Leahy and Specter noted that White House political aide Karl Rove voiced concern to Attorney General Alberto Gonzales last year about voter fraud in Wisconsin, Pennsylvania and New Mexico.

After that conversation, U.S. Attorney David Iglesias of New Mexico was added to the list of prosecutors to be replaced. Two other fired prosecutors – in Arizona and Washington state – have said they think their ousters were prompted in part by failure to aggressively pursue voter fraud cases.

The two senators also noted that Schlozman succeeded former U.S. Attorney Todd Graves. In its letter Monday, the committee said it was also interested in reports that department officials considered adding Graves to the list of U.S. attorneys to be replaced.

Leahy and Specter cited news reports that said Graves refused to endorse a federal lawsuit against the state of Missouri. The suit, authorized by Schlozman in his role at the Civil Rights Division in 2005, alleged that the state wasn't doing enough to remove the names of ineligible people from voter registration lists.

It was dismissed this spring by a federal judge, who said that while voter registration problems existed, she wasn't convinced they were as widespread as the government contended. And in the absence of actual fraud, which was not alleged in the suit, the state's actions to educate election boards about cleaning up their lists was reasonable, she said.

When the suit was filed, however, Republicans used it to support claims that voter fraud was a serious problem.

As U.S. attorney in Kansas City, Schlozman brought voter-fraud indictments days before the election against four people who were registering voters for ACORN, a liberal group. Two of the defendants have pleaded guilty, and the two others are awaiting trial. Although ACORN has backed the prosecutions, critics of Schlozman question its timing.

The election resulted in Republican Sen. Jim Talent's defeat, giving Democrats control of the U.S. Senate.

Leahy and Specter asked Schlozman to make himself "available ... for interviews, depositions or hearing testimony" and bring documents related to the investigation.

Both the Senate and House judiciary committees have threatened to issue subpoenas if Justice Department and White House officials do not cooperate with their inquiries.

The Associated Press contributed to this report.

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North Carolina
Demos Report Highlights North Carolina's Compliance with National Voter Registration Act

For Immediate Release
May 8, 2007
Contact: Timothy Rusch, Demos
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North Carolina lauded for compliance with national voter registration act

New Report shows that IMPROVED implementation steps will help increase voter registration opportunities for low-income people

--> Download report here

New York, NY--North Carolina is taking a number of steps to be in full compliance with the National Voter Registration Act of 1993, specifically its requirement that states offer voter registration opportunities in public assistance agencies, according to a new report published this week by Demos, a national election reform and voting rights policy center.

Congress passed the National Voter Registration Act (NVRA) with two primary aims: increasing voter registration opportunities and ensuring the integrity of the voting process. Yet, while most states created effective programs for mail-in and Department of Motor Vehicles-based registration processes, many neglected the NVRA's Section 7 requirement that states offer voter registration in public assistance agencies.

The new study published this week, entitled Expanding Voter Registration for Low-Income Citizens: How North Carolina is realizing the promise of the National Voter Registration Act, details how the state's NVRA's public assistance voter registration efforts had lapsed in recent years, despite initial success. Since being notified in June 2006 of their declining registration numbers in public assistance offices by the NVRA Implementation Project--a partnership of Demos, Project Vote, ACORN and Lawyers' Committee for Civil Rights Under Law--the State Board of Elections has worked diligently to improve implementation of this vital law.

In the early part of the decade, registrations at public assistance agencies had declined sharply. Report findings include:

- Public assistance voter registrations in North Carolina declined by 73.5 percent between 1995-1996 and 2003-2004. Between 2003 and 2005 alone, public assistance voter registrations declined statewide by 16 percent, though the number of households participating in the Food Stamp Program increased by 24 percent and WIC program participation increased by 6.5 percent.

- Public assistance offices in 25 counties experienced a decrease in registrations in 2004 as compared to 2003--even though 2004 was a presidential election year and logically should have seen an upswing in registrations.

- In 2005, public assistance offices in each of 35 counties registered fewer than 10 clients; offices in 11 of those 35 counties did not register a single client, and four counties failed to register even one client in the three years for which data was provided.

Once notified, the North Carolina State Board of Elections took immediate steps, with guidance from the NVRA Implementation Project and Lawyers' Committee, to meet Section 7 requirements, including: distributing to the agencies signs that alerted clients to the opportunity to register; identifying NVRA coordinators for each county; revising the training manual; establishing an 800 number help desk; and, holding the first of its biannual meetings with agency heads.

Results of the improved compliance were almost immediate:

- Although the SBOE has received only the first reports from the local public assistance agencies, the improvements already are remarkable: Eleven percent more voters were registered in the single month of February 2007 than in the entire year of 2005 in the 30 counties providing complete monthly data.

- Twenty-two of the 30 counties reporting complete monthly data registered more voters in the single month of February 2007 than they did in all of 2005. Many of these counties registered more than twice as many voters in February 2007 compared to all of 2005.

- Mecklenburg and Guilford Counties, two urban counties with sizable low-income populations, experienced significant gains in voter registrations. Guilford County registered over 30 times as many people in the single month of February 2007 as it did in all of 2005. Similarly, Mecklenburg County registered significantly more voters in February 2007 than in all of 2005.

- Beaufort County, a county with a 17.4 percent poverty rate, saw an increase of over 1,000 percent in voter registrations in March 2007 compared to 2005.

"The single greatest right, and responsibility, of any US citizen is the ability to vote," said Gary Bartlett, Executive Director of North Carolina's State Board of Elections. "The National Voter Registration Act charges all election officials with the responsibility to protect that privilege by ensuring that the opportunity to register to vote is readily available to all eligible citizens."

"North Carolina has always been committed to providing citizens with access to voter registration and certainly appreciates the information and resources provided to us by the NVRA Implementation Project. The revitalization of our agency voter registration program can be credited to the hard work and dedication of many individuals. It is our sincere desire to continuously improve our current efforts and to become a resource for any state working to improve their own compliance with Section 7 of NVRA."

To view the full report, Expanding Voter Registration for Low-Income Citizens: How North Carolina is realizing the promise of the National Voter Registration Act, visit www.demos.org.

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Note to editors: For more information on this report--or the letter submitted by ACORN, Project Vote, the Lawyers' Committee, and Demos to the House and Senate Judiciary Committees on May 8 calling for investigation into selective NVRA enforcement by the Department of Justice--please contact Tim Rusch or the contacts listed above. To schedule an interview with Lisa Danetz, lead report author and Demos Senior Counsel, please contact Tim Rusch.

##########

Ohio
Man Accused Of Voting In 2 Counties

WBNS-10TV News
May 08 2007 1:46PM

COLUMBUS, Ohio - A Reynoldsburg man was indicted by a grand jury on Tuesday, accused of casting votes in Franklin and Licking counties for the Nov. 7, 2006 general election.

Claudel Gilbert faces four felony counts of election law violation stemming from an investigation launched by election officials both counties, according to the Franklin County Board of Elections.

Election records indicate Gilbert registered to vote at a home located on Douglas Fir Drive in Franklin County after registering to vote at Reynoldswood Drive in Licking County 12 days earlier.

Gilbert's two addresses were discovered when Boards of Elections in both counties screened a statewide data base to verify voter registration, elections officials said.

"Registration in more than one county normally indicates a voter has moved from one county to another and registered at their new address without canceling their previous registration," said Matt Damschroder, director of the Franklin County Board of Elections. "When a voter is flagged on the statewide voter registration database as being a duplicate, the two counties research the voter's activity to determine which county should keep the voter. In this case, Mr. Gilbert had activity at the same election in both counties.

"By working closely with our colleagues in Licking County, we were able to determine that Gilbert was not only improperly registered at more than one address, but also voted in both counties in the same election," Damschroder added. "These are serious allegations."

The Franklin County Board of Elections referred the matter to Franklin County Prosecuting Attorney Ron O'Brien on Monday.

Watch 10TV News and refresh 10TV.com for additional information.

##########

Rhode Island
House approves bill 'preregistering' voters (16-year-olds)

Providence Journal
Wednesday, May 9, 2007
By Elizabeth Gudrais and Steve Peoples

Journal State House Bureau

PROVIDENCE – The idea of letting 16-year-olds "preregister" to vote is back.

The House passed a bill that would allow it yesterday. Governor Carcieri vetoed the measure last year; the sponsor, Rep. Edwin R. Pacheco, is hoping it will meet a better fate this year.

The goal, says Pacheco, is to foster civic engagement by making it more likely that young adults will vote in the first election in which they're eligible to do so.

Rhode Island law already allows 17-year-olds to register, as long as they will turn 18 before the next election. Pacheco's bill would allow anyone 16 or older to preregister, with that registration becoming active upon the voter's 18th birthday.

During discussion on a day when the Assembly also considered utility-service shutoffs, computer crimes and the structure of the Board of Elections, some of Pacheco's colleagues questioned whether the legislation was necessary.

"I just think this is another on the long list of things that young people should be doing for themselves, quite frankly," said Rep. Richard W. Singleton, R-Cumberland. "When you turn 18, it's your responsibility as an American citizen to vote in elections. ... What's wrong with this generation? They happen to be the most pampered generation in the history of the world, and have the most information at their fingertips in a second, and yet ... we have to drag them to the polls."

Others who opposed the bill said it would clog an already error-ridden voter registry, noting that it contains no provision for verifying when an 18-year-old's registration becomes active, or that he or she has not moved since registering. "I believe we should entice people to vote and make it easy for them to vote," said Rep. Rene R. Menard, D-Lincoln, "but let's clean up the list first."

In the end, the bill's backers prevailed. Rep. Donald J. Lally Jr., D-South Kingstown, said the bill might help, in particular, youths who enlist in the military at their 18th birthday and are deployed far from Rhode Island by the time an election rolls around and they realize they aren't registered to vote.

What happens on the Senate side will determine the bill's fate. Last year, the Senate did not approve the measure until the final night of the session. The governor's veto came in mid-July, and the Assembly never reconvened for an override vote.

Pacheco, D-Burrillville, said he's hopeful there won't be a repeat veto from Governor Carcieri, and that he' s open to amendments that would make the bill more palatable to senators or the governor – for instance, delaying the bill's effective date to allow more time for updating the voter registry.

In the House yesterday, lawmakers also approved a bill that would change the definition of criminal activity with regard to computers. Specifically, it would no longer be a crime to "access, alter, damage or destroy a computer system, computer network, computer software, or computer program" "intentionally and without authorization" unless the action was performed "for fraudulent or illegal purposes." The bill's sponsor, Rep. Raymond J. Sullivan Jr., D-Coventry, said it was meant to prevent people from inadvertently committing a crime by surfing the Web over an unsecured wireless network.

Over the objections of Republican members, the House approved a bill to strip the governor of his authority to choose the chair and vice chair of the state Board of Elections. Instead, the board's seven members would appoint the leaders with a majority vote. (The board members are appointed by the governor, subject to Senate approval.)

The Senate, meanwhile, approved a bill aimed at helping low-income residents restore gas and electric shutoffs.

Current law allows customers to have service restored after paying 25 percent of the outstanding balance and setting up a three-year payment plan. But it has little leniency for those who miss payments.

The bill passed unanimously yesterday, sponsored by Sen. Joshua Miller, D-Cranston, and supported by the Wiley Center, would give residents an opportunity to miss three payments over the three-year period without losing service. A shutoff is prohibited so long as the missed payments are not consecutive and the amount due at the end of the payment plan is paid in full.

A companion bill is scheduled for a vote in the House today.

speoples@projo.com

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Bryan Whitener/EAC/GOV
05/10/2007 11:03 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (5-10-07, Thurs)

Commissioners:

The following items are in the news.

##########

National
- Congresional Hearing Reveals Voting Machine Flaws
- Karl Rove's big election-fraud hoax (EAC mentioned)
- Gonzales likely to face new questions on firings (LA Times; voter fraud questions in today's AG testimony)
- Missouri Prosecutor Says He Was Pushed to Resign (NYT; Todd Graves & voter registration lawsuit)
- U.S. Attorneys, Reloaded (NYT editorial on Todd Graves matter)
- Senator Bond's office faulted Todd Graves
- Fired prosecutors McKay, Iglesias expect charges
- DOJ Sanitizes Website To Remove Press Release Announcing Election-Eve Indictments
- Thomasenia Duncan Named FEC General Counsel

California
- Bowen wants hack-free voting systems
- SOS Debra Bowen Unveils Details On Top-to-Bottom Review of California's Voting Systems (press release)
- Voting Machines Test: A New Goal?

Florida
- Landslide of problems from new elections law (Palm Beach Post editorial)

Indiana
- Bugs surface in new vote machines
- Voters shut out in Marion County

##########

National
Congresional Hearing Reveals Voting Machine Flaws

NY1 Politics
Molly Kroon
May 08, 2007

After years of criticism that the state was moving too slowly in certifying new electronic voting machines, many states nationwide are taking a second look at the machines that cost taxpayers millions of dollars and some possibly their votes. NY1's Molly Kroon filed the following report.

Experts testified at a Congressional hearing Monday that states scrambled to meet federal deadlines after the widespread problems back in the 2000 presidential election. But now, many states may have to go back to the drawing board.

"The testing labs have approved systems that have lost thousands of votes, approved systems that are unreliable," said Dr. David Wagner, a computer scientist who testified at the hearings. "They've approved systems with serious security vulnerabilities."
One of those labs, Ciber Technologies, tested 70 percent of the electronic voting machines in use today, but is now barred from approving machines after it failed to properly document its inspections.

States may now have to recertify all the machines. The company's chief executive officer blamed the government for lax oversight.

"We were lulled to sleep by the process, which was not our fault," said CEO Mac Slingerland. "The fact that we slept was probably our fault."

Some states are waking up. The Florida Legislature last week voted to throw out its touch screen voting machines for ones that provide a paper trail, after thousands of ballots failed to record votes in last year's election. Maryland's doing the same and California's secretary of state will begin state wide testing of their machines next month.

But New York still hasn't certified any machines. The state has been a lightning rod of criticism for taking so long -- because the state legislature was slow to move, but also due to the Board of Elections' independent review process. It was sued by the federal government and risks losing $50 million in federal funding for the new machines.

"What's really interesting to me is that all these other states have already spent their money but now have inferior equipment," said Douglas Kellner of the Board of Elections. "New York is committed to getting it right the first time."

A bill in Congress would extend the deadline so New York won't lose funding and create more transparency in the testing process nationwide.

The state hopes to have another company complete the process begun by Ciber to certify machines, which means New Yorkers will still be voting the old fashioned way in the presidential primaries in February. T

The new machines are expected to be in place for the fall election.

##########

National
Karl Rove's big election-fraud hoax (EAC mentioned)

Republican manipulation of the polls long predates the U.S. attorneys plot -- and the U.S. voting system needs an overhaul.

Salon.com
May 10, 2007
By Garrett Epps

May. 10, 2007 | By evil chance, I spent the Saturday night before Election Day 2000 at a jolly dinner for high-level Republicans. Most of the talk over the entrees concerned why then-candidate George W. Bush had been too pusillanimous to tell the voters that Al Gore was not just a liberal, but a Soviet-style Marxist-Leninist. But as the desserts circulated, so too did a piece of comic relief -- an anonymous leaflet explaining to voters that because of heavy voter registration, the rules had been changed: Republicans would vote on Tuesday, Democrats and independents on Wednesday.

I think of that dinner whenever I read about the widening scandal of the U.S. attorneys and the politicization of the Justice Department under Attorney General Alberto Gonzales. Gonzo is probably the most endangered man since William Tell's son Walter. The pattern behind the scandal, however, transcends Gonzales' fate or that of his underlings.

At least part of the U.S. attorneys plot seems to derive from the "election fraud" hoax that Republicans are trying to perpetrate in order to gain control of the country's voter lists. So nailing this inept crew of thugs won't be good enough. We need laws protecting the right to vote from the kind of phony, partisan prosecutors that Gonzales, Rove and Co. were trying to put in place, and from the punitive, restrictive voter-ID laws that are a prominent part of the far-right political agenda.

Republicans do cherish their little practical jokes -- the leaflets in African-American neighborhoods warning that voters must pay outstanding traffic tickets before voting; the calls in Virginia in 2006 from the mythical "Virginia Election Commission" warning voters they would be arrested if they showed up at the polls. The best way to steal an election is the old-fashioned way: control who shows up. It's widely known that Republicans do better when the turnout is lighter, whiter, older and richer; minorities, young people and the poor are easy game for hoaxes and intimidation.

The latest and most elaborate of these jokes is the urban legend that American elections are rife with voter fraud, particularly in the kinds of poor and minority neighborhoods inhabited by Democrats. In 2002, Attorney General John Ashcroft announced that fraudulent voting would be a major target of the Department of Justice. As the New York Times reported last month, the main result of this massive effort was such coups as the deportation of a legal immigrant who mistakenly filled out a voter-registration card while waiting in line at the department of motor vehicles.

But the administration has remained ferociously committed to suppressing voter fraud -- as soon as it can find some. In April of last year, Karl Rove warned a Republican lawyers' group that "we have, as you know, an enormous and growing problem with elections in certain parts of America today. We are, in some parts of the country, I'm afraid to say, beginning to look like we have elections like those run in countries where the guys in charge are, you know, colonels in mirrored sunglasses. I mean, it's a real problem.

"I appreciate that all that you're doing in those hot spots around the country to ensure that the ballot -- the integrity of the ballot is protected, because it's important to our democracy."

One of the aims of the abortive purge of U.S. attorneys was to punish those who refused to toe the line on the new emphasis on alleged voter fraud. A few fired prosecutors would serve as examples to the rest -- either move to criminalize the election process or face dismissal.

But the assault on voter fraud was a solution looking for a problem. As part of the Help America Vote Act, Republicans insisted on creating the Election Assistance Commission, which commissioned studies of the asserted problem. When the studies failed to turn up evidence of fraud nationwide, appointed Republican officials on the EAC insisted that the language say only that "there is a great deal of debate on the pervasiveness of fraud in elections" -- the same approach to inconvenient evidence that's made the Bush global-warming policy the envy of the world.

The legend of massive voter fraud forms the backdrop to enactment of harsh voter-ID laws. As previously recounted in Salon, a state voter-ID law in Missouri nearly prevented the Democrats from retaking the U.S. Senate -- a prime example of how the voter fraud narrative was used to sell a law intended to keep Democrats from the polls.

In November 2000, Missouri Republican John Ashcroft lost his Senate seat in a close election in which the votes of African-Americans from St. Louis were crucial. Ashcroft's next job was U.S. attorney general. The Department of Justice and Missouri's two U.S. attorneys soon undertook multiple voter fraud investigations. They probed the 2000 election, the 2001 mayoral primary in St. Louis, and the 2004 election, convicting a total of four people. The resulting specter of fraud was used to float a voter-ID law in the Republican-dominated state Legislature, which was finally passed in May 2006.

By then, President Bush had already used a Patriot Act loophole to dispatch Bradley Schlozman, who had supervised the voting section of the DOJ's Civil Rights Division, to Kansas City as the Western District of Missouri's new U.S. attorney. Less than a week before Election Day 2006, Schlozman indicted four people for voter fraud. Schlozman's endeavors were first spotlighted by Salon in a report on March 21, helping to make him the target of increasing blogger and media scrutiny. As one former senior Justice official told Salon then, Schlozman's appointment had senior Justice Department officials "scratching their heads" because Schlozman "was not a very well-regarded trial attorney."

In the end, the voter-fraud scare didn't help Missouri Republicans. Schlozman may have been filing indictments, but the state Supreme Court had struck down Missouri's new voter-ID law a month before the election, finding that it contravened the state constitution. On Nov. 7, Democrat Claire McCaskill defeated incumbent Republican Jim Talent by fewer than 50,000 votes out of more than 2 million cast. The voter-ID law would've required about 170,000 registered voters to apply for a new ID just to be allowed to vote again.

We can't count on the U.S. Constitution to protect the election process. The Constitution does not explicitly protect the right to vote, and the conservative majority on the Rehnquist and Roberts courts has proved friendly to anti-turnout measures. As Mark Graber of the University of Maryland pointed out recently, the court echoed right-wing rhetoric about voter fraud in a little-noticed 2006 opinion allowing Arizona to implement its restrictive voter-ID law. "Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised," the court's per curiam opinion stated. This is the argument that voter-restrictionists have fallen back on. There may be no voter fraud, but if people think there is, then we should tighten up anyway. That's the argument used in Missouri (with support from the White House), where studies showed elections were mostly clean. As Graber noted, to restrictionists, "such a 'feeling' offsets the interests of voters who are disenfranchised by voter-ID laws by *actually driving honest citizens out of the democratic process!"*

So we can't count on federal courts; and not every state constitution contains a guarantee as specific as Missouri's provision guaranteeing the vote to "all citizens of the United States." In 2007, the right to vote is a little like the swimmers in the film "Open Water" -- still afloat, but encircled by hungry sharks who sooner or later will move in for the kill.

The answer is in the hands of the new Democratic majority in Congress. Though most Americans believe that the states are in sole charge of voting and elections, the framers at Philadelphia recognized that state officials might abuse their authority over voting. That's why Article I, Section 4 of the Constitution gives states the initial power to supervise federal elections -- but adds that "Congress may at any time by Law make or alter such Regulations." This provision was hotly debated during ratification; but federalists insisted that Congress needed this backstop power to protect the republican character of the new government against state meddling.

The new Congress so far has considered only a few measures to protect the right to vote: Rep. Rush Holt, D-N.J., has proposed a bill to require voting machines to keep paper trails; Sen. Barack Obama, D-Ill., wants to outlaw certain deceptive practices aimed at voter suppression.

But such defensive measures amount to little more than swatting sharks' noses. We're going to need a bigger boat. In the 1970 case of Oregon v. Mitchell, a fractured court approved a statute lowering the voting age to 18 in federal elections, even if states insisted on keeping it at 21 for state voting. (The 26th Amendment subsequently lowered the age to 18 for all elections.) How about a bill making clear that every American who is not under active sentence for felony has a right to vote for those who will govern the country? The bill could go on to say that states could require reasonable identification for new registrants, but outlaw onerous provisions like Missouri's, which would, for example, have required that married women produce legal documentation of their name change. (I reviewed the Missouri law with my mother, who has voted in every election since 1944. We determined that, had she lived in Missouri, she would have been barred from the polls in 2006.)

For that matter, why not just move the entire country to the vote-by-mail system we use in my home state of Oregon? It's quick, it's convenient, it leaves a paper trail, and we have had no credible accusations of voter fraud since it was adopted during the 1990s -- and a stunning 86 percent of registered voters cast ballots in the 2004 presidential election.

Voter fraud is a phony issue, and if restrictionists shape the dialogue, sooner or later our right to vote will become property of the Karl Roves, who will use the machinery of the criminal law to recreate the electorate in their own image.

The real issue is the right of every American citizen to vote, the right of the people to choose their rulers, rather than the reverse. Who can really oppose that, if asked about it in the light of day?

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National
Gonzales likely to face new questions on firings (LA Times; voter fraud questions in today's AG testimony)

Lawmakers are expected to press him for details about the replacement of two other attorneys from key election states.

Los Angeles Times
By Richard B. Schmitt and Tom Hamburger, Times Staff Writers
May 10, 2007

WASHINGTON — Atty. Gen. Alberto R. Gonzales, seeking to clear the air surrounding the firings last year of eight U.S. attorneys, is expected to face tough new questions today on Capitol Hill about the Justice Department's replacement of top prosecutors in two other battleground states.

Among other topics, members of the House Judiciary Committee are expected to ask Gonzales about turmoil in the U.S. attorney's office in Minnesota, where a young lawyer, Rachel Paulose, has generated controversy since she was named in 2006 to replace a department veteran, Tom Heffelfinger, who had served under both President Bush and his father.

Lawmakers also want to know whether another former U.S. attorney, Todd Graves of Kansas City, Mo., was forced out last year for not endorsing a voter-fraud lawsuit against Missouri in November 2005. That suit was launched by his successor, a conservative voting-rights advocate from Justice Department headquarters. It was dismissed by a court as baseless.

Heffelfinger, who resigned in February 2006, has said he did so voluntarily and was not aware of any pressure to leave. But congressional staffers confirm that his name appeared at one point on the list of U.S. attorneys to be removed.

Graves departed the following month, and has declined to discuss the circumstances of his departure. "What is going on now in D.C. is a three-ring circus, and I don't want anything to do with it," Graves said in a statement.

Neither man was among the eight U.S. attorneys whose dismissals last year have sparked allegations of political meddling by the White House and Justice Department in corruption investigations and voter fraud cases.

But both worked in states that had close Senate elections in November. Some Democrats have suggested that the Bush administration tried to manipulate Justice Department prosecutions to help tilt close races toward Republicans.

And both were apparently facing pressures from Washington late in their tenures. Justice Department e-mails released to congressional investigators in recent weeks indicate that other U.S. attorneys, who were not identified, would have been recommended for dismissal — if they had not resigned first.

Justice Department officials had unspecified "concerns" about Heffelfinger, according to a lawyer familiar with testimony given to congressional investigators who declined to be identified because the testimony is sealed.

On Wednesday, the office of Sen. Christopher S. Bond (R-Mo.), who recommended Graves for U.S. attorney, confirmed a report that a former staffer had urged the White House to replace Graves just months before he resigned from the post.

A freshman member of the judiciary panel, Rep. Keith Ellison (D-Minn.), said he planned to quiz Gonzales about the departure of Heffelfinger and his replacement by Paulose.

Ellison and the chairman of the panel, Rep. John Conyers Jr. (D.-Mich.), co-signed a letter Tuesday asking the Justice Department to explain whether Heffelfinger's replacement was sought "as a matter of political loyalty."

Specifically, they asked whether actions related to enforcement of voter fraud statutes may have played a role in the departure of Heffelfinger and the selection of Paulose.

Paulose's leadership was challenged in mid-April, when three top lawyers in the Minnesota office resigned from their managerial posts after raising concerns about her management of the office. This week, members of the judiciary panel were provided copies of a new letter the three former managers sent to Paulose complaining about office morale and statements she made to the media about their actions.

In Missouri, Graves faced questions about his interest in pursuing voting fraud cases, but was also under fire because his wife had accepted lucrative contracts to run state automobile license offices.

Bond said in a statement Wednesday that he was unaware his aide had contacted the White House about Graves.

"With Missouri's long history of vote fraud concerns, it should be no surprise to anyone when law enforcement authorities pursue vote fraud allegations," he said.

"But I had no contact, including with anyone in the administration or the U.S. attorney's office on their work, the types of cases they should pursue or any specific cases."

The Kansas City Star has reported that in November 2005 Graves refused to sign a Justice Department complaint against the state of Missouri alleging that local election authorities, mostly in rural areas, had failed to properly maintain their voter registration lists.

Graves' replacement as U.S. attorney, Bradley Schlozman, had authorized the Justice Department lawsuit against Missouri when he was an official in the department's voting-rights section.

A U.S. district judge ruled against the government last month, saying that the Justice Department had produced no evidence of wrongdoing by state election officials.

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National
Missouri Prosecutor Says He Was Pushed to Resign (NYT; Todd Graves & voter registration lawsuit)

New York Times
May 10, 2007
By ERIC LIPTON

WASHINGTON, May 9 — The former United States attorney in Kansas City, Mo., said Wednesday that he was pushed to resign last year after disagreements with the Justice Department over politically sensitive cases. That would make him the ninth federal prosecutor forced out by department officials in Washington.

The prosecutor, Todd P. Graves, who held the office in Kansas City from 2001 until March 2006, was the subject of a complaint in 2005 from a staff member for Senator Christopher S. Bond, Republican of Missouri, a spokesman for Mr. Bond confirmed.

Mr. Graves said in an interview Wednesday that in early 2006 he was already planning to move into private practice in Kansas City. But he said he was unaware at the time that his name was on a January 2006 list of United States attorneys that Justice Department officials were considering dismissing.

He said that in early 2006, Michael Battle, then the executive director of the office that supervises federal prosecutors, told him he should look for another job. Mr. Battle, who has since resigned, is the same official who told the other prosecutors they were being dismissed.

Mr. Graves said he did not know the exact reason he was urged to resign. But he said it was clear now that he would probably have been among those dismissed if he had not agreed to leave.

"I was pushed," he said.

Justice Department officials declined to comment.

Mr. Graves said he had taken at least three stands on cases that may have alienated officials in Washington, adding, "I guess to them I wasn't a team player or something."

Two of those cases involved the civil rights division, which has been a focus of Congressional investigators because of accusations that it has become more partisan in the Bush administration, pushing Republican causes. In one case, Mr. Graves said, the civil rights division had wanted him to sue the State of Missouri for what federal officials thought was its failure to purge voter registration roles of people who had died, changed addresses or left the state.

Mr. Graves said he believed the suit would not succeed because local governments are responsible for registration records. After his refusal to sign off, the lawsuit was authorized by Bradley J. Schlozman, then the acting chief in the civil rights division in Washington. The department named Mr. Schlozman as Mr. Graves's interim successor.

The administration saw such lawsuits as a way to combat voter fraud. But Democrats have said the lawsuits were politically motivated because poor and elderly voters were more likely to be taken off registration rolls.

The lawsuit was dismissed when a federal judge concluded that the state could not enforce the purging of local voter registration rolls.

Mr. Graves said he might also have alienated officials in Washington by giving Claire McCaskill, a Democrat who has since been elected to the United States Senate from Missouri, a letter in 2004 saying there had been insufficient evidence to file charges in a case from the 1990s that involved her office manager. Last year, Ms. McCaskill unseated Jim Talent, a Republican.

Mr. Graves said that in retrospect, he might have been seen as too independent and unwilling to push causes important to the Republican Party unless he felt action was merited by his reading of the law.

"As a prosecutor, I was always fiercely independent," he said. "I just called balls and strikes."

The contact from Mr. Bond's office concerned an accusation that Mr. Graves had a conflict of interest because his wife and his brother-in-law had been awarded a no-bid contract by the administration of Gov. Matt Blunt, a Republican. Shana Marchio, a spokesman for Mr. Bond, said the senator had not been aware that the former staff member had contacted a Bush administration official "to determine whether they would be replacing U.S. attorneys" and to say "there might be an interest in doing something different in this position for the second term."

Ms. Marchio said the call was motivated by the contract accusation, and was not based on Mr. Bond's interest in moving against voter fraud.

The Senate Judiciary Committee, which is investigating whether politics motivated the eight dismissals, has invited Mr. Schlozman to testify at a hearing next week.

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National
U.S. Attorneys, Reloaded (NYT editorial on Todd Graves matter)

New York Times
Editorial
May 10, 2007

As the United States attorney scandal grows, so does the number of prosecutors who seem to have been pushed out for partisan political reasons. Another highly suspicious case has emerged in the appointment of Bradley Schlozman, a controversial elections lawyer, to replace a respected United States attorney in Missouri. From the facts available, it looks like a main reason for installing Mr. Schlozman was to help Republicans win a pivotal Missouri Senate race.

Jim Talent, the Republican incumbent, was facing a strong challenge from Claire McCaskill last year when the United States attorney, Todd Graves, resigned suddenly. Mr. Graves suspects that he may have been pushed out in part because he refused to support a baseless lawsuit against the state of Missouri that could have led to voters' being wrongly removed from the rolls.

Mr. Graves was replaced by Mr. Schlozman, a high-level Justice Department lawyer who had made his name in the Bush administration by helping to turn the department away from its historic commitment to protecting the voting rights of minorities. Mr. Schlozman was one of the political appointees who approved Tom DeLay's Texas redistricting plan and Georgia's voter ID law, over the objection of career lawyers on the staff, who insisted that both violated the Voting Rights Act. McClatchy Newspapers reported that Mr. Schlozman also has been accused of hiring Justice Department lawyers based on their political party.

Mr. Schlozman injected the United States attorney's office directly into the Talent-McCaskill race. Days before the election, he announced indictments of four people who were registering voters for the liberal group Acorn on charges of submitting false registration forms. The Republicans turned the indictments into an issue in the campaign, although Ms. McCaskill won the election anyway. Congress should investigate whether the indictments violated Justice Department guidelines, which say that election crime investigations should not be conducted right before an election, because they can themselves become a campaign issue.

Mr. Schlozman's short stint in Missouri — he left after about a year — appears to be another case of the Bush administration's politicizing federal prosecutors' offices. Mr. Graves was reportedly on a list to be fired, and clues are emerging about why. He said this week that when he interviewed for the job, he was asked to name one attribute that describes him. "I said independent," he said. "Apparently, that was the wrong attribute."

The Senate Judiciary Committee has asked to question Mr. Schlozman, and it should also question Mr. Graves. But Karl Rove and the former White House counsel Harriet Miers, who appear to have been deeply involved in the United States attorney firings, are likely to know the most about what happened, and should be made to testify as well.

A single Senate campaign may not seem that important. But Missouri's race was among the nation's closest, and if Mr. Talent had won, the Republicans would have kept their Senate majority. The American people have a right to know whether Mr. Schlozman was sent on his brief assignment in Missouri to pursue justice, or to affect the outcome of an election.

##########

National

Senator Bond's office faulted Todd Graves

Staff raised possibility of replacing U.S. attorney as patronage questions arose.

Kansas City Star
May 9, 2007
By DAVE HELLING and STEVE KRASKE
The Kansas City Star

Sen. Kit Bond's staff, worried about a potential scandal over Missouri's fee offices, suggested two years ago that the Bush administration should consider replacing then-U.S. Attorney Todd Graves.

Bond's office told The Kansas City Star that staff members were concerned about the political impact of Graves' participation in the controversial patronage system. In February 2005, Graves' wife, Tracy, was given a no-bid contract to run a lucrative fee office, where Missourians get car licenses and conduct other state business.

Such contracts, awarded by Gov. Matt Blunt's administration, led to fierce criticism from Democrats in Missouri. Eventually an investigation, conducted by a Republican U.S. attorney in Arkansas, found no wrongdoing.

Despite their concerns in 2005, Bond's office now says it has no evidence that the communication, or the fee office system, played any role in Graves' departure from the U.S. attorney's office.

Tuesday, in an interview and a statement, Graves flatly rejected the suggestion that his wife's involvement with a fee office led, directly or indirectly, to his departure.

"This would be humorous if we were not talking about the United States Department of Justice," Graves said.

Graves abruptly resigned in March 2006, roughly one year after Bond's office communicated its concerns. His departure has now been linked to the firings of several other U.S. attorneys and the resulting controversy that threatens U.S. Attorney General Alberto Gonzales.

Bond spokeswoman Shana Marchio said in a statement to The Star that the communication was recently discovered.

"We have learned that staff in 2005, out of concern at the time over the fee office controversy, contacted the administration to determine whether they would be replacing U.S. attorneys at the end of their initial four-year terms," her statement said. The staff, she said, suggested "there might be an interest in doing something different in this (Graves') position."

Marchio's statement said this happened without Bond's knowledge. "The senator had no knowledge of this staff action, did not approve it, would not have approved it," she said.

But, Bond's office said, the senator did become directly involved with Graves' tenure in early 2006, when Graves' departure was imminent.

"Senator Bond ... upon (Graves') request personally called the White House to gain Todd extra time to wrap up case work before his departure," Marchio's statement said.

Graves' unexpected resignation as U.S. attorney for the Western District of Missouri is now under congressional scrutiny, along with the other U.S. attorney evictions. At the time he said his departure was voluntary so he could begin a private law practice.

McClatchy Newspapers has reported that Graves was one of at least 12 U.S. attorneys targeted by the Justice Department. The communication from Bond's office could help explain, at least in part, why Graves ended up on the removal list.

Other explanations include Graves' alleged reluctance to pursue voter fraud cases and the possibility that Graves, like the other dispatched prosecutors, was not, in the words of one Justice official's e-mail, a "loyal Bushie."

While he doesn't think the communication or the fee office scandal were directly responsible for Graves' departure, Bond said he doesn't know why Graves was pushed out. "I really couldn't speculate about any administration list," he said. "You would have to ask them about that."

The Justice Department declined to comment.

Graves said he doesn't know why he would have been a target for removal, but he suggested his "independence" may have played a role.

"When I first interviewed (with the department) ... I was asked to give the panel one attribute that describes me," Graves said. "I said independent. Apparently, that was the wrong attribute."

Missouri Democrats have argued that the state's fee offices, under the Blunt administration, were closely linked to campaign contributions. Tuesday they said news that Bond's office was worried about Graves' link to the fee office system may add to suspicions.

"It's alarming that there is now a connection between Todd Graves being pushed out of his job as U.S. attorney and his involvement in Matt Blunt's fee office scheme," said Jack Cardetti, spokesman for the Missouri Democratic Party.

Bond's office stressed that it had no evidence that Graves had been involved in anything improper with Missouri's fee offices, only that it was a potential political problem.

A person in Bond's office who asked not to be identified because of the sensitive nature of the discussions said the White House rejected Bond's efforts on Graves' behalf because of "performance" concerns.

E-mails from the Justice Department and the White House have used similar language in discussing the other U.S. attorneys who were fired.

Graves was replaced by Bradley Schlozman, who left the Kansas City office after the Senate confirmed John Wood to the post. Wood is Bond's cousin.

The Senate Judiciary Committee has invited Schlozman to testify on May 15.

The fee office system has been a source of dispute for decades, involving both Republican and Democratic administrations. Critics call it a last vestige of patronage that allows governors to reward supporters with lucrative appointments that pay $200,000 to more than $400,000 a year.

Democrats were particularly critical of Blunt for not only continuing the system, but expanding it to include a series of state-run offices, including the one in downtown Kansas City.

At the time Graves left, the Justice Department was investigating the system. That investigation, first revealed by The Star, was conducted by the U.S. attorney for the Eastern District of Arkansas, Bud Cummins.

Cummins also turned up on the administration's list of attorneys to be replaced. He says he was notified in June 2006 that he would be removed, but his firing did not become official until December 2006.

In October 2006, Cummins issued a press release that no wrongdoing in the fee office system was found. "The matter has been closed with no indictments sought or returned," Cummins said.

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National
Fired prosecutors McKay, Iglesias expect charges

The Seattle Times
May 10, 2007
By David Bowermaster

SEATTLE - Two former U.S. attorneys said today they believe ongoing investigations into the dismissals last year of eight federal prosecutors could result in criminal charges against senior Justice Department officials.

John McKay, the former U.S. attorney for Western Washington, and David Iglesias, the former U.S. attorney for New Mexico, also said they believe White House political operative Karl Rove and his aides instigated the dismissals and ultimately decided who among the nation's 93 U.S. attorneys should be fired.

McKay and Iglesias, who were among those fired, made their assertions during a meeting Wednesday with Seattle Times editors and reporters. The two are scheduled to appear this afternoon along with Paul Charlton, the former U.S. attorney for Arizona, during a public-policy forum on the dismissals at Seattle University's School of Law.

"I think there will be a criminal case that will come out of this," McKay said during his meeting with Times journalists. "This is going to get worse, not better."

Ongoing inquiries

McKay cited ongoing investigations into the dismissals by the Senate and House Judiciary committees, and inquiries now under way by the Justice Department's inspector general and its Office of Professional Responsibility.

McKay said he believes obstruction-of-justice charges will be filed if investigators conclude that the dismissal of any of the eight prosecutors was motivated by an attempt to influence ongoing public-corruption or voter-fraud investigations.

McKay said he believes the strongest evidence of obstruction is related to the dismissals of Iglesias and Carol Lam, the former U.S. Attorney in San Diego.

Last fall, Iglesias received calls from U.S. Sen. Pete Domenici, R-N.M., and U.S. Rep. Heather Wilson, R-N.M., inquiring whether public-corruption charges would be filed against prominent Democrats in the state prior to the November elections. Former New Mexico state Senate President Manny Aragon, a Democrat, and three others were eventually charged in April in what prosecutors say was a kickback scheme during construction of a new courthouse in Albuquerque.

Rep. Cunningham

Lam was investigating former U.S. Rep. Randy "Duke" Cunningham, R-Calif., and Kyle "Dusty" Foggo, the former third-highest-ranking CIA official, when senior Justice Department officials targeted her for dismissal. Bribery charges were ultimately filed against both men.

Additionally, McKay and Iglesias said they believe Attorney General Alberto Gonzales and Deputy Attorney General Paul McNulty lied under oath when they testified before Congress that the eight prosecutors were fired for performance-related reasons and because of policy disputes with Justice Department headquarters.

Responding to the charges by McKay and Iglesias, Department of Justice spokesman Brian Roehrkasse issued a statement this afternoon that read, in part: "After several hours of testimony by the Attorney General, over 6,000 pages of documents released to Congress and hours of interviews with other senior DOJ officials, it is clear that the Attorney General did not ask for the resignation of any individual in order to interfere with or influence a particular prosecution for partisan political gain."

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National
DOJ Sanitizes Website To Remove Press Release Announcing Election-Eve Indictments

Thomas Charles
May 10, 2007
Fired Up Missouri

- Abuse of Power
- Bush Administration

Former U.S. Attorney Bradley Schlozman is under fire for using his post as U.S. Attorney, as well as his previous positions at DOJ, to pursue a political agenda for the White House.

One key element of the case that he abused his power is the last minute voter fraud indictments that Schlozman issued on November 1, 2006. This violated the DOJ policy against issuing indictments just prior to elections.

So doesn't it make you curious that the DOJ has scrubbed their website of the press release announcing those indictments? (See November 1, 2006 press releases)

Who removed the press release and under who's orders?

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National
Thomasenia Duncan Named FEC General Counsel

Federal Election Commission
Press Release
May 9, 2007

WASHINGTON – The Federal Election Commission (FEC) announced today that Thomasenia (Tommie) Duncan has been selected to serve as the Commission's General Counsel. "We're very happy to announce that Tommie has agreed to serve as General Counsel," said Commission Chairman Robert Lenhard. "We are confident that she has the legal skills and leadership abilities needed to help lead this agency."

Ms. Duncan has been serving as Acting General Counsel since February 2007 when Lawrence H. Norton stepped down to enter private law practice.

"I'm honored by the confidence the Commission has shown in selecting me," said Ms. Duncan, "and I'm looking forward to continuing to work with our excellent staff to fulfill the Commission's mission."

Prior to her appointment as Acting General Counsel Ms. Duncan was FEC Associate General Counsel for General Law and Advice. Before joining the FEC in February of 2004, Ms. Duncan was General Counsel for America's Promise – The Alliance for Youth. She also has had a distinguished career in government service. She worked as Senior Legal Advisor to the Administrator of the Federal Aviation Administration; General Counsel of the Corporation for National and Community Service; and Acting Deputy Solicitor and Special Assistant to the Solicitor of the U.S. Department of Labor. She began the practice of law with the firm Covington and Burling LLP.

Ms. Duncan is a graduate of Brown University and the University of Pennsylvania Law School, and also attended Yale University Law School.

The Federal Election Commission (FEC) is an independent regulatory agency that administers and enforces federal campaign finance laws. The FEC has jurisdiction over the financing of campaigns for the U.S. House, the U.S. Senate, the Presidency and the Vice Presidency. Established in 1975, the FEC is composed of six Commissioners who are nominated by the President and confirmed by the U.S. Senate.

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California
Bowen wants hack-free voting systems

Sacramento Bee
By Peter Hecht
Bee Capitol Bureau
Published 1:59 pm PDT Wednesday, May 9, 2007

Secretary of State Debra Bowen is asking computer scientists from UC Davis and UC Berkeley to try to hack into election systems across California to ensure that voting equipment is safe from fraud or abuse.

The effort is part of an $1.8 million program Bowen announced Wednesday to test the performance and investigate the security of different voting machines and technologies in use in California.

"California has spent about $450 million on new voting systems over the past few years and yet the result is that people have more questions about whether votes are being counted as they are cast," Bowen said in a telephone conference with reporters.

The program is intended to secure voting systems before the state's Feb 5 presidential primary, one of three statewide elections to be held in 2008.

Under a "top to bottom review" Bowen announced three University of California investigative teams will test voting system computer technology, paper record-keeping and also attempt to hack into voter systems.

The tests of voting systems in counties across the state will be paid for by $750,000 federal Help America Vote Act grant and funding from voting machine vendors providing equipment in California, Bowen said.

The project will be led by Matthew Bishop, director of the computer security laboratory at UC Davis, and David Wagner, a computer science professor at UC Berkeley who specializes in electronic voting and computer security.

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California
SOS Debra Bowen Unveils Details On Top-to-Bottom Review of California's Voting Systems (press release)

Scheduled To Begin Next Week

FOR IMMEDIATE RELEASE
Contact: Evan Goldberg
May 9, 2007
(916) 653-6575

SACRAMENTO - Secretary of State Debra Bowen today unveiled the project plan that will be used to conduct her promised top-to-bottom review of the voting systems certified for use in California.

"California voters are entitled to have their votes counted exactly as they were cast," said Secretary Bowen, the state's chief elections officer. "This top-to-bottom review is designed with one goal in mind: to ensure that California's voters cast their ballots on voting systems that are secure, accurate, reliable, and accessible."
The Secretary of State is entering into an interagency agreement with the University of California to conduct the review - the first of its kind in the nation - that is scheduled to begin the week of May 14 and conclude in late July. UC will assemble three top-to-bottom review teams, drawing specialists from throughout the university system, as well as from public and private universities and private sector companies throughout the country. Each team will consist of approximately seven people and will conduct a review of documents and studies associated with each voting system, a review of the computer source code each machine relies on, and a red team penetration attack to see if the system's security can be compromised.

"My goal is to get California to a place where voters, elections officials, candidates, and activists have confidence in the results of every election," continued Bowen. "This kind of a comprehensive review is essential in getting us to that point. One of three things will happen to each voting system that's being reviewed. The first possibility is that a system will be found to be secure, accurate, reliable and accessible as it stands, so voters can have confidence when they use it on Election Day. Second, a system may be required to use additional safeguards, such as an expanded post-election audit process. The third possibility is that a voting system can't be made secure, accurate, reliable and accessible even with additional safeguards, so that system may be decertified, which means it could not be used for any election in 2008."

Details on the project plan, the people who will be conducting the review, and other information can be found in the attached "Frequently Asked Questions" document or by clicking http://www.sos.ca.gov/elections/elections_vsr.htm.

"One of the concerns people had with the draft criteria was that the vendors would be held to a new set of standards that would be impossible for them to meet by February 2008," continued Bowen. "This final project plan makes it clear that the top-to-bottom review is going to determine whether the voting systems certified for use in California comply with existing state and federal laws that require them to be secure, accurate, reliable and accessible."

In March, Secretary Bowen issued draft criteria and gathered public comments on her proposal. Those comments - over 125 in all - are posted on the Secretary of State's website at http://www.sos.ca.gov/elections/elections_vsr.htm. The Secretary of State welcomes further comments from the public about the review while it's underway and she will continue to provide updates on the website. Comments may be submitted to the Secretary of State's Office by e-mail to votingsystems@sos.ca.gov or by mail to Secretary Debra Bowen, 1500 11th Street, Sacramento, CA 95814, ATTN: Voting Systems Review, 6th Floor.

"Democracy, by definition, is about free, fair and open elections," concluded Bowen. "My goal is to have election results that are beyond question or doubt. Right now, far too many voters are wondering about the accuracy of California's election results. We have three statewide elections next year, which makes it even more essential that our voting equipment be secure, accurate, reliable and accessible."

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California
Voting Machines Test: A New Goal?

> *John Myers is Sacramento Bureau Chief for KQED's "The California Report," heard on 24 public radio stations including 88.5 FM in San Francisco and 89.3 FM in Sacramento, weekdays at 6:50 a.m. and 8:50 a.m.*

KQED's Capitol Notes
KQED's John Myers
May 09, 2007

For the past month, everyone from local elections officials to activists have waited for word from Secretary of State Debra Bowen about exactly how she will conduct her upcoming review of voting machines currently used in California.

Today, she announced that the testing will focus on whether the machines comply with existing election laws-- and not whether they meet a set of standards that she first suggested in late March.

That resolves one of the initial criticisms of Bowen's plan-- where manufacturers argued that that there isn't time for brand new voting machine standards, given that local elections officials need to know by early August which machines are approved for next February's presidential primary.

Instead, Secretary Bowen is now leaving many of the details of the voting machine tests to a panel of researchers she has personally selected. "We have asked the experts to create measuring sticks," she said today in a conference call with reporters. "They need to tell us where the greatest threats are, and what conditions pose the greatest real world risk."

But so far, the early reaction from local elections officials has been... skepticism.

Steve Weir, Contra Costa County registrar and president of the **California Association of Clerks & Election Officials**, says there's been almost no dialogue between Bowen and the people who actually conduct elections in California's 58 counties. Several weeks ago, Weir offered up a group of registrars to participate in the testing. "They've never been engaged in this," he said this afternoon.

And there are some eyebrows being raised over the researchers Bowen has picked to do the actual testing, which is supposed to begin as soon as Monday. Many of the people on the list released today have been very vocal critics of electronic voting machines. A quick Google search of many of the individuals finds some pretty strong opinions on the issue.

How, I asked Bowen today, can they be anything but predisposed to a particular recommendation? "Anybody who's looked at voting systems does tend to have developed some fairly strong opinions," she said. She went on to explain that no one on the panel of testers has advocated for a universal ban on electronic machines.

(Paper-based systems, it should be noted, will also be tested.)

Step one of the new voting machine testing-- a review of all manufacturer documentation-- begins next week. After that, the source code of machines will be examined. And finally, a "red team" hack test will be conducted... the first state-sanctioned test of its kind in the nation, says Bowen.

The voting test documents can be found here.

##########

Florida
Landslide of problems from new elections law (Palm Beach Post editorial)

Palm Beach Post
Editorial
Wednesday, May 09, 2007

Some will hail Gov. Crist and U.S. Rep. Robert Wexler, D-Delray Beach, for ending the state's ill-fated infatuation with touch-screen voting. In fact, to free voters from the fear of electronic doom, they've eliminated the ease, certainty and low cost of touch-screen voting.

The elections bill that the Legislature passed last week and Gov. Crist surely will sign also squanders many millions spent by local governments, especially big counties, on touch screens. Palm Beach County spent $14 million, Broward $20 million and Miami-Dade $25 million. A spokesman for the secretary of state says the market for used touch screens, "especially from Florida," is virtually nonexistent.

Gov. Crist and Rep. Wexler played to the fiction that touch screens can't be trusted, drawing acclaim for their bipartisan plan in February at a packed meeting of south Palm Beach County Democrats. The distrust among some voters goes back to 2000, when punch-card ballots routinely failed to capture voter intent. With the state's blessing, the five largest counties - Palm Beach, Miami-Dade, Broward, Pinellas and Hillsborough - turned to touch screens to avoid the recurring cost of optical-scan paper ballots, a cost they now will be forced to absorb.

The bill converts $28 million in federal assistance for voter registration into money for new election equipment. The five large counties plus 10 smaller ones, including Martin and Indian River, will divvy up $23"million to buy one scanner for every precinct. Voters insert the fill-in-the-bubble ballot into the scanner before leaving the polling place. The scanners reject improper ballots, giving voters a chance to make corrections. Voters can't leave until the ballots are scanned, even if there's a line.

Additionally, 29 counties can divvy up $5 million for printing optical-scan ballots on demand at early voting sites. This is the state's untested solution to replacing the easily programmed, but paperless, touch screens. Estimates for a single printer range from $30,000 to $45,000. Under the state's formula, based on the number of registered voters, Palm Beach County would get about $500,000 for ballot-on-demand printers. Supervisor of Elections Arthur Anderson estimates his cost to be $3.3 million.

The deficit widens. Palm Beach County is eligible for about $4 million to buy optical scanners, but Dr. Anderson estimates that he'll need $18.8 million. That includes two scanners per precinct, to avoid long lines. The state will pay for just one. The estimated cost for paper, printing and transport is $2.5 million. In Martin, Supervisor Vicki Davis estimates that she'll spend at least $300,000 on top of about $330,000 from the state to replace a system that cost $2.4 million. Miami-Dade, in line for about $4 million, expects to spend $6 million to $11 million.

That's the worst, but the bill is bad throughout. Petition drives for constitutional amendments will be tougher. State politicians, though, get to run for federal office without resigning. The Legislature rejected an "I choose not to vote" option to determine voter intent. That wouldn't be nearly as dramatic as spending millions on new equipment, though it probably would have resolved the dispute from Sarasota County's congressional election.

While legislators were blasting local government for "frivolous" spending, they dumped onto local government most of the expense for a politically motivated change in election law. Gov. Crist's commitment to pay the bill is as verifiable as a paperless ballot. Remind us again why this is so popular.

##########

Indiana
Bugs surface in new vote machines

Tally-card mistakes at 8 sites delayed results

Fort Wayne Journal Gazette
May 10, 2007
By Amanda Iacone
aiacone@jg.net

Problems at Allen County polls were few Tuesday, but election workers ran into glitches tallying votes from new machines after the polls closed, delaying efforts to determine final numbers.

Poll workers in some locations had used the wrong tally cards to read voting machines.

Although election workers realized the mistake, they had to return to about eight polling sites throughout Fort Wayne and find people to unlock those buildings so they could obtain information from voting machines, election director Pam Finlayson said Wednesday.

Last November, election workers experienced similar problems at two or three polling sites.

But most polling places had only one of the new voting machines then. On Tuesday, only the new equipment was used, Finlayson said.

She said she's already working on contingency plans to pre-empt similar problems in the November general election.

Some issues could be addressed during training sessions, she said, and it's possible the tally cards should be labeled better.

She called Tuesday's night's problems a "user issue."

The problems put elections staff behind by only an hour. They finished about 11 p.m. – their goal was to finish by 10 p.m., Finlayson said.

Counting votes in the fall should go faster because Finlayson hopes to buy additional equipment allowing workers to obtain data faster. Election staff also would have more time to resolve problems like those experienced Tuesday, she said.

Election board member and Allen County Clerk Therese Brown said the board might need to revamp the hour-long training session poll workers are required to attend before each election.

She said the training should be more hands-on and include role-playing. Currently, the training consists mostly of a PowerPoint presentation and an explanation of how to operate the machines.

In general, most workers are used to the old voting machines and are now learning to use the new machines plus changes in election law, Brown said.

"Mechanically there's only so much you can do," she said of Tuesday night's delays. "I think we did the best we could with that."

##########

Indiana
Voters shut out in Marion County

In a chaotic day, 5 precinets fail to open; 45 others open late

Indianapolis Star
By Robert King
robert.king@indystar.com
May 9, 2007

Beth White's first Election Day as Marion County clerk started going downhill long before the sun rose, when 150 precinct inspectors -- the folks in charge of the polls -- never showed up to collect ballots and voter lists.

But by the end of perhaps the most chaotic, confused and bumbling election in Marion County's history, things got so bad that questions were raised about whether White should resign and whether major election reform is needed to prevent another debacle.

The problems were countywide and profound.

Five of the county's 917 precincts never opened.

At least 45 more opened late.

Ballots and precinct voting lists were shipped in several cases to the wrong voting location, forcing election officials to print new ones, some as late as 4 p.m. -- 10 hours into the 12-hour voting day.

Poll clerks and poll judges with no inspector training were deputized on the spot to fill in for the 150 missing inspectors.

In some cases where both poll workers and voting materials were present, voting machines couldn't be turned on because poll workers had been given the wrong keys.

Bobbie Nichols' experience at the Hawthorne Community Center on the Westside seemed to capture the spirit of the day, when he showed up to vote just after noon only to find the voting machines untouched and no sign of an election.

"I almost thought I had the wrong day," Nichols said.

Republicans held the clerk's post for almost 30 uninterrupted years until voters selected White, a Democrat, in November. So Republican leaders, who have spent years watching GOP clerks get blistered for smaller gaffes, teed off on White.

"It was very easy for them to throw stones when they were on the outside. She learned today that governing is very hard, and clearly she's not up to the task," said Marion County GOP Chairman Tom John. He said White "showed a complete lack of leadership and poor planning" and should have seen warning signs earlier.

Asked whether White should resign, John said: "I think she should."

White and Democratic Party Chairman Michael O'Connor made no excuses.

At a midmorning news conference, White apologized repeatedly and said she knew some people who wanted to vote but couldn't. Her biggest failure, she said, was not having backups ready in the event that poll inspectors were no-shows. Asked how she would respond to Republican critics who were by then calling her incompetent, White said she would simply try to do better.

"I take responsibility for what happened. If anybody wants to call me incompetent, then that is their business," she said. "I am going to spend the rest of my time between now and November figuring out how this is not going to happen again."

She has no plans to resign.

O'Connor said he saw no reason for White to resign and that she could fix the problems in time for the general election. But he said the Republicans were justified in their strong reaction to the problems.

"I live in a grown-up world," he said. "I think that is fair criticism."

The first clue that trouble was afoot came around 7 p.m. Monday, White said, when her office held a last-minute opportunity for poll inspectors to pick up the boxes of ballots and voting lists needed for their precincts. By night's end, there were still 150 unclaimed boxes.

White and her staff worked through the night, without sleep, to come up with another plan, she said. At 4 a.m., she sent her workers out with dozens of the boxes in hand for delivery to the precincts.

Meanwhile, she tried to persuade various poll workers, whose job is to sign in voters, and judges, whose duty is to aid the disabled and raise voter-identification questions when necessary, to accept the role of inspector, who has ultimate responsibility for opening and closing the precincts.

Many poll workers stepped up. The problem was that in some cases, her staffers delivered the ballots -- and lists of voters entitled to use them -- to the wrong precincts.

"It was more of a human error compounding what was already a frustrating situation," she said.

The problems were bad enough that White considered, but opted against, seeking a court order to extend voting hours. She said the logistics for such an issue -- tired workers who couldn't stay late and reprogramming machines to operate past 6 p.m. -- were too much.

John said he knew of only one election do-over in Indiana, when the Supreme Court ordered a new vote in East Chicago after evidence of fraud. He said it is possible here that a candidate in a close race might legally challenge the results if the irregularities appear to have affected the outcome. In any case, he wants an investigation into what went wrong.

The day's problems were such that some suggested that major reforms were needed. Chairmen from both parties said reducing the number of precincts -- and thus the needed workers -- might help. And neither would rule out exploring voting centers, which would centralize the polling places even more.

Asked whether political parties need to be removed from poll staffing decisions, White said she would be "all ears" if the legislature wanted to change things. Above all, White's long day seemed to give her a new understanding of the gravity of her responsibility.

"I think what is clear," she told reporters midmorning, "is that I have to do better, that my preparation and my work to get ready for this election was not sufficient. And I have to take full responsibility for that."

Recent glitches during elections

Election troubles are nothing new for Marion County. Here's a look:

- November 2006: More than 200 polling places in Marion County got off to a rocky start when poll workers couldn't immediately get electronic machines to work properly. Vote counting was delayed because of a mistake in preparation of voting machines made by the company that supplied them. The programming error told the machines the election was supposed to end at 8 p.m. instead of 6 p.m.

- May 2006: Twelve poll inspectors appointed by the Republican Party failed to pick up voting materials from the Marion County clerk's office the night before the election. In turn, some voting sites didn't open on time. Some election workers mistakenly provided some voters with two ballots for some School Board races.

- November 2004: Marion County election workers mistakenly deleted more than 3,300 voter registrations of people thought to be dead. About 300 people were allowed to cast votes after election officials realized they had wrongly been listed as deceased. Hundreds of other Marion County residents were left off the voter list because the registration forms used to sign them up were outdated. The Voter Registration Board later decided to accept the registrations, but not in time to include the names in the poll books sent to the precincts. People left off the rolls were able to vote after election workers consulted a separate list to make sure they were registered.

- May 2004: Marion County election officials called for an overhaul of training and poll procedures after some polling places ran out of ballots. Because of high voter turnout for competitive races, 60 precincts requested more ballots. That forced voters to leave without voting or to wait to cast their votes. Election officials also found some uncounted absentee ballots. They decided not to include those newly found ballots in results because they couldn't be sure they hadn't already been counted.

- November 2003: Despite a new, $11.1 million optical-scan voting system, there still was trouble counting ballots. It took six weeks after the election for results to be tallied and for Democrats to officially win control of the City-County Council. Also, machine trouble delayed the counting of nearly 10,000 absentee ballots for days.

Source: Star library research

Call Star reporter Robert King at (317) 444-6089.

##########

Bryan Whitener/EAC/GOV
05/10/2007 05:45 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Today's media inquiries (5-10-07, Thurs)

Commissioners:

Today we had the following media inquiries:

(1) Leslie Robinson, a reporter for the news blog, ColoradoConfidential.com inquired about the rules and regulations that EAC board members must adhere to. She said that one of the EAC members from Colorado, Dan Kopelman, has recently been sited by the Secretary of State for his business of selling voter lists and consulting partisan candidates. She asked if these infractions cause Kopelman to withdraw from the EAC board. We explained that, according to SEC. 213 of the Help America Vote Act of 2002 (HAVA), there are two EAC Standards Board representatives from each state, that one is a local official, one is a state official and that both individuals represent their state on the Board. We said that the state representatives are selected by the Chief State election official from each state. We said that, with respect to Colorado, Mr. Kopelman was selected to serve on the Board by Colorado Secretary of State Michael Coffman. We suggested Ms. Robinson contact their office for questions regarding the appointment of state representatives from Colorado.

(2) Rose Marie Berger, Associate Editor of Sojourners/Call to Renewal, asked for the document on voter fraud authored by Tova Wang and Job Serebrov. We replied that our Inspector General is currently reviewing the circumstances surrounding this research and noted page two of the following memo from the chair. We said that when that process is complete we'll be glad to discuss it further. 04/16/07 - EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects

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Bryan Whitener/EAC/GOV
05/11/2007 09:59 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Daily News (5-11-07, Frid)

Commissioners:

The following items are in the news.

##########

National

- **White House sought investigations of voter fraud allegations before elections**
- **Congress to vote on paper trail for e-voting systems**
- **House panel approves e-voting paper trails**
- **Survey reports rise in voting by Americans overseas** (to view the report click here)
- **Committee won't endorse Real ID Act**
- **Dodd, Shelby Unveil Bill To Overhaul CFIUS** (regarding overseas companies attempting to take over sensitive U.S. holdings)

Connecticut

- **Old Lever Voting Machines Free for Taking** (free for EAC's collection)

Florida

- **Republicans Hit Jennings' Call to Put Aside Her Florida Court Case**

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* Also included below is the weekly summary of election reform news and opinion that appears in *electionline.org* today.

##########

National
White House sought investigations of voter fraud allegations before elections

McClatchy Newspapers
By Margaret Talev and Marisa Taylor
May 10, 2007

WASHINGTON - Only weeks before last year's pivotal midterm elections, the White House urged the Justice Department to pursue voter-fraud allegations against Democrats in three battleground states, a high-ranking Justice official has told congressional investigators.

In two instances in October 2006, President Bush's political adviser, Karl Rove, or his deputies passed the allegations on to Attorney General Alberto Gonzales' then-chief of staff, Kyle Sampson.

Sampson tapped Gonzales aide Matthew Friedrich, who'd just left his post as chief of staff of the criminal division. In the first case, Friedrich agreed to find out whether Justice officials knew of "rampant" voter fraud or "lax" enforcement in parts of New Mexico, Pennsylvania and Wisconsin, and report back.

But Friedrich declined to pursue a related matter from Wisconsin, he told congressional investigators, because an inquiry so close to an election could inappropriately sway voting results. Friedrich decided not to pass the matter on to the criminal division for investigation, even though Sampson gave him a 30-page report prepared by Republican activists that made claims of voting fraud.

Late Thursday night, a Justice Department spokesman disputed McClatchy's characterization, saying that the White House asked for an inquiry, but never ordered an investigation to be opened.

While it was known that Rove and the White House had complained about prosecutors not aggressively investigating voter fraud, Friedrich's testimony suggests that the Justice Department itself was under pressure to open voter fraud cases despite a department policy that discourages such action so close to an election.

The new details from Friedrich's closed-door testimony were provided to McClatchy Newspapers as Gonzales made his third appearance Thursday before Congress to answer questions about the firings of eight U.S. attorneys.

Congressional investigators are looking into whether the firings were motivated in part by prosecutors' failure to bring voter-fraud charges against Democrats.

In New Mexico, one of the states where voter-fraud allegations surfaced, the U.S. attorney, David Iglesias, was fired. The U.S. attorney in Wisconsin, Steve Biskupic, was targeted for removal but wasn't fired. Sampson told investigators that Biskupic may have been spared because Justice officials were wary of angering Rep. James Sensenbrenner, R-Wis., then chairman of the judiciary panel.

Gonzales revealed little in the daylong testimony, as Democrats grew increasingly upset with his failure to offer specifics about who decided whom to fire and why.

Rep. Robert Wexler, D-Fla., accused Gonzales of lying when he couldn't be pinned down on who decided to add Iglesias to the list in the eleventh hour. "Are you the attorney general?" he asked. "Do you run the Department of Justice? You know who put him on the list, but you won't tell us."

The Justice Department issued a statement after the hearing, saying "it is again clear that the Attorney General did not ask for the resignation of any individual in order to interfere with or influence a particular prosecution for partisan political gain."

A portion of the transcript of Friedrich's testimony was released during the hearing before the House Judiciary Committee. Other redacted portions were described to McClatchy Newspapers by a senior congressional aide familiar with the testimony. The aide spoke on condition of anonymity because the full transcript hasn't been released. Friedrich couldn't be reached for comment.

White House spokesman Tony Fratto downplayed the importance of Friedrich's testimony, saying, "It's no secret that we and others had long-standing concerns about voter fraud in a number of places - including Wisconsin, Pennsylvania and New Mexico."

He also criticized members of Congress for their "selective leaking of testimony" and "breathless reaction to any mention of Karl Rove."

Gonzales remained unwavering in his insistence that the firings weren't improper as Republicans called for an end to the investigation.

"As we have gone forward, the list of accusations has mushroomed, but the evidence of genuine wrongdoing has not," said Rep. Lamar Smith, R-Texas. "Mr. Attorney General, this investigation may find that you and your staff did only what you were accused of at the start - the unremarkable and perfectly legal act of considering ordinary politics in the appointment and oversight of political appointees."

Although the Justice Department has released thousands of documents related to the inquiry, officials haven't said whether they considered firing more prosecutors.

McClatchy Newspapers has reported that the department targeted at least four other prosecutors, including Biskupic.

Another former U.S. attorney, Todd Graves of Kansas City, Mo., revealed this week that he was asked to step aside for another candidate. He also said he had refused to sign off on a voting-rights lawsuit, which another Justice Department official later approved in Washington. The official, Brad Schlozman, later became Graves' temporary replacement.

Gonzales denied that the department considered removing Graves as part of the same firing plan.

Asked whether Graves may have been fired for refusing to sign off on the lawsuit, Gonzales said, "I have no basis to believe that particular case had anything to do with Mr. Graves' departure."

He also denied that the department considered firing former Los Angeles U.S. Attorney Debra Yang, despite reports that former White House counsel Harriet Miers had inquired about whether she would be leaving. Yang left to join a law firm representing Rep. Jerry Lewis, R-Calif., as her office was investigating him. She has said she left voluntarily.

In addition to Graves and Biskupic, the department targeted at least two other U.S. attorneys before settling on the eight late last year.

The other prosecutors, Thomas Heffelfinger of Minneapolis and Thomas Marino of Pennsylvania, were located in states that Rove identified as election battleground states.

##########

National
Congress to vote on paper trail for e-voting systems

Computerworld
Marc L. Songini
May 10, 2007
A U.S. House of Representatives committee has decided to send a bill to the floor that would require all touch-screen voting systems to produce a paper receipt for each ballot cast.

The House Administration Committee, which oversees elections, approved the bill on Tuesday. A vote on the Voter Confidence and Increased Accessibility Act (download PDF) could be voted on as early as next week, according to Rep. Rush Holt (D-N.J.), the bill's sponsor. The bill also mandates routine random audits of election results to ensure the accuracy of voting tallies.

Holt has long been a critic of touch-screen systems that fail to provide a voter-verified paper trail that can be used for canvassing or recount. Last year, he was unable to get the House to act on an earlier version of the bill, which he refiled in February. "Until we require that voting systems produce a voter-verified paper ballot, the results of our elections will always be uncertain," Holt said yesterday in an e-mail statement. "I hope and expect that Congress will move quickly to pass this legislation so that all voters can be confident that their votes are counted as cast."

Holt said that the bill offers elections officials a flexible timeline on rolling out the new e-voting hardware and boosts the amount of federal funding earmarked in earlier versions of the measure. It also provides for more intellectual property protection for the makers of e-voting hardware and software.

The committee vote drew mixed responses from e-voting experts and critics. "In November, 18,000 votes went missing on voting machines in Sarasota County, Fla.," said Ralph Neas, president of the People for the American Way Foundation, which supports the bill. "If voting machine problems are a sickness, the Holt bill is good medicine. We must make every effort possible to ensure that an injustice like Sarasota never happens again. This bill will end paperless voting -- period."

But Michael Shamos, a professor who specializes in e-voting issues at Carnegie Mellon University in Pittsburgh, called the bill "terrible." He said that, in effect, it outlaws direct recording electronic (DRE) machines by imposing standards so strict -- such as banning roll-to-roll printing configurations -- that they can't be met by any system now in use. The bill would eliminate the entire touch-screen/DRE technology over security problems that he argued have never really been exploited by hackers and could be easily be addressed in other ways.

Moreover, Shamos said, the bill also assumes that optical scan systems are better, safer or more secure than DREs. "The catalog of manipulations of optical scan systems is as long as your arm," he said.

One DRE critic said the Holt bill doesn't go far enough. The systems should be eliminated outright, as the Florida state legislature recently voted to do, according to blogger and e-voting critic Brad Friedman. "Once again: DREs are antithetical to democracy in that no voter -- no human being, in fact -- can ever verify their ballot before it is cast and counted on a DRE system," he said. "A 'paper trail' added to such systems, as the Holt bill currently does, is never actually counted."

A spokesman for Holt said the legislation is designed to preserve verifiability and the ability to conduct audits. It's not intended to prescribe what specific voting systems states and localities must use.

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National

House panel approves e-voting paper trails

http://news.com.com/House+panel+approves+e-voting+paper+trails/2100-1028_3-6182590.html
http://news.com.com/2102-1028_3-6182590.html?tag=st.util.print

By Anne Broache
Staff Writer, CNET News.com
Published: May 9, 2007, 3:03 PM PDT
Story last modified Thu May 10 06:26:48 PDT 2007

All U.S. voting systems would be required to produce or make use of verifiable paper ballots in time for the next presidential election under a bill approved this week by a House of Representatives panel.

By a 6-3 vote along party lines, the House Administration Committee on Tuesday afternoon approved an amended version (PDF) of the Voter Confidence and Increased Accessibility Act, chiefly sponsored by Rep. Rush Holt (D-N.J.) and backed by 212 other members of Congress.

Aside from the paper trail requirement, the bill also imposes a number of new security obligations, such as a general ban on any wireless technology in the machines and on connecting devices used to record or tabulate ballots to the Internet. In addition, only equipment preapproved by accredited test laboratories would be eligible for use in federal elections--a move aimed at keeping potentially flawed software from being slipped in at the last minute.

All voting precincts nationwide would generally have to conform to the new requirements in time for the general federal election in November 2008 and for each subsequent election. The bill sets aside an extra $1 billion--more than triple the amount proposed in the original bill--to distribute to states in the 2007 fiscal year to help them make their systems compliant.

State and local election officials have long complained that they wouldn't have enough funding or time to make all of the changes. Failure to amend the bill in ways that would meaningfully address those concerns prompted the committee's three Republicans to reject it after hours of debate on Tuesday, said Salley Collins, a spokeswoman for the committee.

"We're told these requirements are unrealistic and problematic and impossible for them to reach by 2008," she said in a telephone interview.

Lofgren, for her part, said in a statement e-mailed to CNET News.com Wednesday evening that politics shouldn't get in the way of passing the bill, which she called "a vital first step in ensuring that we restore the public's trust in its government."

Many districts that employed machines with paper-based ballots or receipts in the last election are expected to qualify for a reprieve, extending that deadline for full compliance to the first federal election in 2010. But Collins said that's likely not enough time either.

Whether the proposal will actually proceed through the necessary channels and become law this year is less certain. Sen. Dianne Feinstein (D-Calif.) signaled early this year that she plans to introduce a companion bill in the Senate, but it was not immediately clear when that would happen. Similar bills have stalled in previous congressional sessions.

Meanwhile, 27 states have already passed laws requiring current or future use of voter-verified paper ballots, and eight more use them statewide even though they aren't required by law, according to Verified Voting, which advocates for paper trails.

Now on News.com
Jobs brushes aside backdating concerns Microsoft slims its virtualization software Can plankton slow climate change? Care and feeding of a Webkinz Extra: The best games to play at work Video: Hydrogen cars--the hybrids of the future?

Computer scientists and watchdog groups have long charged that paper ballots are the only way that voters can truly verify their intent was recorded, particularly in the case of touch screen machines that have earned a reputation for security flaws and glitches and cannot be independently audited.

Public-interest groups blamed buggy touch screen machines for what appeared to be an 18,000 undervote in the congressional race in Sarasota County, Fla., last year and have argued that voter-verified paper trails could have helped to resolve that apparent anomaly. (Florida has since opted to ditch those machines entirely.)

The approved House bill would automatically consider the paper version the ballot of record except in special cases, such as if there is "clear and convincing" evidence that enough paper records have been compromised to influence the race's outcome. But critics of that approach say it's unwise because paper ballots can easily be mangled or lost. Supporters of the bill say it addresses that concern by prescribing that the paper ballots be printed on "durable paper of archival quality."

They also said the bill is praiseworthy because it would require all states to conduct random, hand-counted audits of select percentages of the voter-verified paper ballots cast in a race, except when a candidate ran uncontested or racked up 80 percent or more of the vote count.

"We've never had that in elections, even before voting machines came in," said Barbara Simons, the Association of Computing Machinery's past president and chairwoman of its e-voting study group. "This is a really enormous change, and just from a security perspective, it really makes a big difference."

##########

National
Survey reports rise in voting by Americans overseas (to view the report click here)

International Herald Tribune
By Brian Knowlton
Wednesday, May 9, 2007

WASHINGTON: Absentee voting by Americans overseas, both military and civilian, appears to have risen substantially in the November elections, according to a new survey that said the trends suggested record overseas participation in 2008.

The survey, by the nonprofit Overseas Vote Foundation, found that half of the local election jurisdictions that responded had observed an increase in civilian voting from abroad, when compared with the previous midterm elections in 2002, while only 12 percent had noted a decrease. Similarly, half of local offices reported increased military voting, while just 14 percent saw a decrease.

The report cited three explanations: the growing number of Americans abroad, including soldiers and civilian contractors in Iraq, for example; heightened voter interest because of recent polarizing elections; and accelerated efforts by partisan and nonpartisan groups to contact, inform and mobilize overseas voters, including through the Internet.

"These trends may indicate that the 2008 elections will be one in which local election jurisdictions may face new record numbers" of overseas votes, the report said.

But the survey also found that substantial numbers of overseas ballots were still being rejected, chiefly because ballot request forms, or the ballots themselves, arrived too late. The second leading cause was request forms or ballots that were improperly filled out or illegible. This was particularly a problem among voters in the 18-to-29 age group.

And such problems mostly have to be resolved by mail, which imposes additional delays.

In addition, the relative mobility of overseas voters - military personnel in particular - meant that many were not receiving ballots.

The Overseas Vote Foundation sent its survey to 3,814 local elections officials across the country; 18 percent responded.

##########

National
Committee won't endorse Real ID Act

Federal Computer Week
BY Alice Lipowicz
Published on May 9, 2007

The Real ID Act of 2005 raises serious concerns about privacy, data security, cost, fairness and mission creep that should be fully scrutinized before the act is implemented, an advisory committee to the Homeland Security Department recommended May 7.

Because those concerns are unresolved, the DHS Data Privacy and Integrity Advisory Committee said it cannot endorse the Real ID Act or the notice of proposed rulemaking at this time.

"Given that these issues have not received adequate consideration, the committee feels that it is important that the following comments do not constitute an endorsement of Real ID or the regulations as workable or appropriate," the panel wrote in comments about the Real ID Act issued May 7.

Congress approved the Real ID Act in 2005 to establish a national system to strengthen the integrity of state driver's licenses. Governors have said the act will cost up to $11 billion to implement over five years.

The data privacy committee said DHS Chief Privacy Officer Hugo Teufel asked it to review the notice of proposed rulemaking. In an eight-page comment letter, the panel issued 12 recommendations for improving the rulemaking.

Given the magnitude and potentially serious consequences of the Real ID Act's national identity management system, the federal government and states need to examine more seriously issues of privacy, accountability and data security, among others, the advisory committee wrote.

For example, under the current rulemaking, states are asked to submit comprehensive plans for protecting the personal data to be collected from individuals. However, the plans are likely to be "inconsistent" and "ineffective" because there are no minimum national standards that need to be met, the advisory group said. It recommends that the final rule include such a standard.

In addition, the comprehensive plans must address privacy, which they currently are not required to do, the advisory group said. There should be rules for accountability and storage of the data, notice to individuals on information being collected, provisions for redress and access, and provisions explicitly limiting what the cards can be used for, among others.

The advisory group also said encryption might not be effective if each state is applying it differently. "Critics of encryption would argue that proper implementation depends on managing encryption keys across the multiple jurisdictions, which is unlikely to be efficient or effective," the report states.

The panel's 12 recommendations are:

The final rule should include an explicit data security standard for states to follow.
The final rule shall recommend specific steps to prevent unauthorized access to information on the card.
The standards should be modeled on procedures used by the American Association of Motor Vehicle Administrators.
The final rule must require that states be accountable for the personal information they collect and store.
States should institute procedures for individuals to file complaints and obtain information on compliance with the states' comprehensive security plans.

DHS should evaluate the privacy notices contained in the states' comprehensive security plans.

DHS should evaluate whether individuals may opt out from secondary uses of the card.

DHS should evaluate whether individuals have adequate access to the personal information contained in the Real ID Act databases.

DHS should evaluate whether states have included a principle of limited purpose for use of the cards, with restrictions on unauthorized, commercial or secondary uses.

DHS should re-evaluate the technologies to be used in storing machine-readable information on the card.

All state driver's license databases should include restrictions on access, transfer and secondary uses of the information.

DHS should conduct initial background checks on employees involved in production of the identity cards.

Alice Lipowicz writes for Washington Technology, an 1105 Government Information Group publication.

##########

National
Dodd, Shelby Unveil Bill To Overhaul CFIUS (regarding overseas companies attempting to take over sensitive U.S. holdings)
Congress Daily
HILL BRIEFS
May 11, 2007

Senate Banking Chairman Dodd and ranking member Richard Shelby, R-Ala., said Thursday they have reached agreement on legislation to revamp the Committee on Foreign Investment in the United States, which handles applications for overseas companies attempting to take over sensitive U.S. holdings.

The two said in a statement they would mark up the bill next week, but offered few details. An aide said the measure was a mixture between last year's Senate bill and CFIUS legislation the House passed Feb. 28.

Business groups opposed last year's Senate legislation, driven by Shelby, because they said it would dampen foreign investment in the United States.

That bill would let the CFIUS board extend national security reviews beyond the current 30-day maximum and would require notification to Congress of CFIUS reviews before those reviews were completed.

Dodd said the bill would establish a new procedure for vetting applications that have national security implication. "It does so in a systematic way, but through timely and clear procedures so as to not discourage investors," he said.

##########

Connecticut
Old Lever Voting Machines Free for Taking (free for EAC's collection)

WestportNow.com
Westport, CT
May 9, 2007
By Jennifer Connic

They're now pieces of Westport's history, but no one has come forward to take the lever machines off the hands of the registrars of voters.

The town's registrars of voters said today they are making the lever machines–which have been replaced by electronic equipment this fall–available to anyone who wants to take them.

The two registrars had tried to sell the machines, but there were no takers, said Registrar Nita Cohen.

Now the two registrars need space in the schools to store some of the new equipment, and the machines need to go before July 1 in order to make room for the giant storage bins, she said.

The storage bins–which cost nearly $1,600 each–will hold everything except the actual electronic equipment, which are locked away at Town Hall, she said.

If no one takes the lever machines, Cohen said, they will be taken to the dump for salvage.

"Other towns are in the same boat," she said. "We have 30 of them. Imagine some place like Bridgeport."

Some towns are using the old lever machines for the fall municipal elections–and they will continue to be allowed for municipal elections–but the registrars feel it would be a good time for Westporters to gain experience with the machines before the 2008 presidential election, Cohen said.

Whoever wants the machines would need to provide their own transportation, she said, but it could be difficult because each machine weighs about 900 pounds each.

"I hope someone does save one or two," she said. "Maybe the Historical Society will take one."

First Selectman Gordon Joseloff said, who has a collection of Westport artifacts, said he wouldn't mind having a machine since he is a Westport history buff.

"At 900 pounds, though, it's a heavy souvenir," he said. "I hope that if we leave them to the free market someone will determine them to be valuable."

Joseloff also said he wonders if the voting machines could be placed on eBay.

Anyone interested in one of the machines should contact the registrars' office at (203) 341-1115.

Posted 05/09 at 01:35 PM

##########

Florida
Republicans Hit Jennings' Call to Put Aside Her Florida Court Case

Roll Call
By Matthew Murray
Roll Call
Thursday, May 10; 4:27 pm

House Republicans are criticizing a recent request by Christine Jennings (D) to put her court case on hold while federal auditors explore whether faulty voting equipment cost her the election in Florida's 13th district in November.

A Jennings spokesman confirmed Thursday that lawyers for her campaign filed a motion last week to temporarily stay her case, which has been trickling through the Florida court system for months. Jennings filed her case soon after her 369-vote defeat by now-Rep. Vern Buchanan (R-Fla.). Jennings and some Democrats claim that malfunctioning electronic voting machines resulted in 18,000 "undervotes" from heavily Democratic areas.

Last week, a three-Member elections task force from the House Administration Committee, which was organized to manage the Jennings-Buchanan dispute, voted to hand the matter over to the Government Accountability Office. A GAO investigation is expected to take at least 45 days.

House Democratic leaders reluctantly seated Buchanan at the beginning of the 110th Congress, but held open the possibility of removing Buchanan and seating Jennings if evidence surfaced during her court case or the House investigation to suggest that the Democrat had actually won. But Jennings is seeking to delay the court case, for now.

"We asked for the court proceedings to be put on hold," Jennings spokesman David Kochman confirmed on Thursday. "It's almost six months since we filed the case and four months since we filed the appeal. It's become clear that the best chance for a quick solution ... is from the [House] task force and the [GAO]."

But freshman Rep. Kevin McCarthy (R-Calif.) and other House Republicans claim Jennings' move is tantamount to throwing in the towel and sidesteps a critical judicial component of the appeal process. Stalling litigation in the state court system, McCarthy suggests, may prevent crucial evidence from surfacing in a case that still has not gone to trial.

"I'm surprised that Ms. Jennings and her lawyers have suddenly decided to give up on the Florida court proceedings that she initiated," said McCarthy, the lone Republican on the House elections task force. "There is a reason that the House has encouraged contestants to exhaust state remedies before coming to the House with a contest. By suddenly giving up on the court proceedings while awaiting a ruling, Ms. Jennings is denying the task force crucial input from the courts that we need to utilize in our own deliberations."

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* Also included below is the weekly summary of election reform news and opinion that appears in *electionline.org* today.

##########

----- Forwarded by Bryan Whitener/EAC/GOV on 05/11/2007 09:57 AM -----

listadmin@electionline.org
05/10/2007 02:22 PM
Please respond to listadmin@electionline.org

To bwhitener@eac.gov
cc
Subject electionline Weekly--May 10, 2007

electionline Weekly - May 10, 2007
electionline.org

I. In Focus This Week

Holt Bill Clears Committee as Republican Amendments Shot Down

Few changes but much controversy over reform legislation

By Kat Zambon
electionline.org

Arguing that they were acting on behalf of state and local elections officials concerned about the implications of election reform legislation, Republicans in the Committee on House Administration were nonetheless thwarted this week in their attempts to amend the bill by Democrats who say the bill is necessary to safeguard the 2008 vote.

In his opening statement, Rep. Vernon Ehlers, R-Mich., ranking member on the committee, reiterated his concerns about H.R. 811, the "Voter Confidence and Increased Accessibility Act of

2007."

"Unfortunately, the additional time for review has not changed my perception of this bill," he said. "As we all saw in the 2000 elections, in the days of hanging and pregnant chad, paper is far from fool-proof."

Ehlers displayed a stack of letters he received from elections officials from across the country opposing the bill.

"These are the people who are most familiar with our elections systems, telling us that they simply cannot effectively administer the 2008 election if Congress ignores their pleas and forces this legislation upon them," he said.

GOP lawmakers on the committee introduced a dozen amendments, with issues directly relevant to the bill, including altering the legislation's source code disclosure requirements, its timetable for meeting federal mandates for voter-verified paper audit trails, what would constitute the ballot recording in a recount, cost issues and the future of thermal paper printing currently in use in a number of states.

Other amendments reflected the party's legislative priorities in election reform, including two introduced by Rep. Kevin McCarthy, R-Calif., that would have required voters to show photo identification at the polls. The subject is not addressed in the original bill nor a substitute offered by Rep. Zoe Lofgren, D-Calif., who also chairs the subcommittee on elections.

Democrats, however, said they had the voters on their side.

Lofgren's staff countered Ehlers' stack of letters with boxes of petitions signed by citizens in favor of the bill.

"We have heard the concerns of state and local elections officials and we have tried to address them in the substitute bill," Lofgren said. "We believe this substitute deals with all of the issues that can be dealt with."

Lofgren's substitute would increase the authorization for replacing touch-screen voting machines to $1 billion from the $300 million offered originally in H.R. 811. It would allow states to use the audit standards issued in H.R. 811 or develop another audit system with approval from the National Institute of Standards and Technology (NIST). NIST would be required to establish guidelines and a process for states to receive approval by May 1.

While thermal paper doesn't fall under the definition of "durable paper," which the substitute described as capable of withstanding hand counts and recounts and able to be preserved for 22 months, Lofgren's substitute would allow states that currently use electronic voting machines with thermal paper to receive a waiver, allowing them to keep using their voting technology until 2010.

Under Lofgren's substitute, the Election Assistance Commission (EAC) would be responsible for notifying Congress, states and the public when a voting machine testing laboratory's accreditation is revoked, terminated, suspended or restored and when there is "credible evidence of significant security failure at an accredited laboratory." EAC would also be required to set up an escrow account through which vendors will pay testing labs.

Ehlers offered a substitute that would delay implementation until 2010 and give states the authority to determine their own audit procedures. States say the process in the bill is worse than nothing because it interferes with the recount process, according to Ehlers, and the National Association of Counties (NACo) supported Ehlers' substitute. It's impossible to measure the successes of the Help America Vote Act (HAVA) until states have finished implementing it, Ehlers said, and H.R. 811 undermines HAVA's gains. Ehlers' substitute failed.

After Ehlers' bill was voted down, Rep. Michael Capuano, D-Mass., introduced an amendment that would give voters the ability to choose between casting a paper ballot at the polls or at an electronic voting machine. The amendment also would require polling places to carry enough paper ballots for each voter and display a sign reminding voters to verify their ballots. Capuano's amendment passed.

After Capuano's amendment was introduced and approved, the mark-up fell into a routine whereby a minority member of the committee would propose an amendment, a majority committee member, usually Lofgren, would explain their opposition to the amendment, then the amendment would be defeated in a vote.

At the close of the hearing, Ehlers stated, "I just register my dismay that the bill is passing in this form." Lofgren's substitute passed.

Citing the 18,000 lost votes in Sarasota, Fla. during the 2006 general election, Ralph Neas, People for the American Way (PFAW) president urged Congress to consider the new H.R. 811 in a timely fashion. "If voting machines are a sickness, the Holt bill is good medicine. We must make every effort possible to ensure that an injustice like Sarasota never happens again," he said in a press release.

However, PFAW's assertion that a voter-verifiable paper audit trail would have prevented the election meltdown and ensuing confusion in Sarasota is "despicable," according to Brad Friedman.

"Neas well knows - because we personally discussed it at length with him . that 'paper trails' on the paperless touch-screen voting machines used in the FL-13 election would likely have made no difference whatsoever in the outcome of that election," Friedman wrote. "Apparently a paper ballot - one that is actually counted - for every vote cast in America is of little interest to either the Democratic or Republican members of the committee."

When asked if the Holt bill that was approved in committee was an improvement, Alysoun

McLaughlin, associate legislative director for NaCO said, "Not even close . there's still no DRE on the market" that meets H.R. 811's requirements.

McLaughlin pointed out that H.R. 811 would force states to conduct audits by hand and ban the use of handheld scanners to tally ballots for the official count. "Fundamentally there are some bottom line assumptions in this bill that cannot go. The notion that electronic scanners should never be used in conducting a recount . is impossibly cumbersome," she said.

"What I keep hearing is that people are going to quit their jobs if this becomes law," he said. "It can't be implemented - hand recounts statewide? You just can't do that."

Statewide Voter Lists Are Still Works in Progress

States have faced lawsuits, technical challenges

By Sean Greene
electionline.org

The creation of statewide voter registration databases, one of the most costly and complex requirements of the Help America Vote Act (HAVA), has caused delays and technical problems in several states, leading to questions about the effectiveness of the systems as well as federal lawsuits.

electionline.org profiles four states that have faced some of those challenges: Alabama and New Jersey, which have been sued by the U.S. Department of Justice (DOJ) for missing the January 1, 2006 HAVA database deadline; and Texas and Wisconsin, which have experienced problems during system implementation.

Alabama

Alabama's path to completing its voter registration list has been long and at times contentious. In 2005, state attempts to find a company to build a new database failed. By May 2006, DOJ sued then-Secretary of State Nancy Worley (D) for missing the deadline. The suit led to a court-ordered appointment of a special master to implement the system, Gov. Bob Riley (R).

Some Democrats saw the move as politically charged.

"It is impossible to ignore the partisan colorations of the court's intervention..It is also striking that in no instance has the Department of Justice under the Bush Administration ever sought such an aggressive intervention in a state's election process," said Rep. Artur Davis, D-Ala., in a letter to Attorney General Alberto Gonzales last August. (Davis recently became a member of the Committee on House Administration which handles oversight of federal elections, filling the vacancy left by the death of Rep. Juanita Millender-McDonald.)

The Department of Justice defended its actions.

"This administration also has filed voting lawsuits against state officials of both parties in

Georgia, Indiana, Maine, Missouri, North Carolina, Oklahoma, Pennsylvania, Tennessee and Texas. Facts, not party affiliations, drive our litigation decisions," responded Wan J. Kim, assistant attorney general for the civil rights division.

Politics aside, efforts to meet the court-mandated August 31 deadline have forged ahead. In September 2006 Riley appointed a committee to oversee the creation of the system and in March 2007 he announced that Omaha-based Election Systems & Software (ES&S) had been selected as the vendor, stating Alabama was "on track to meet this important deadline."

New Jersey

New Jersey was also sued by DOJ and entered into an agreement last October because of troubles with its registration system that arose during its debut a year ago. The agreement mandates full HAVA compliance by the end of this month.

"The statewide voter registration system was deployed [in May] but significant problems were uncovered in testing and programming the system.Problems remaining include data conversion problems, the accurate issuance of absentee ballots, and the inability to verify a registrant's identity," according to an October 2006 press release from the state's attorney general.

While the state did not respond to requests for comment, difficulties are being addressed, reported Portland, Ore.-based Saber Corporation, the vendor creating the list. The company also has election management systems in Rhode Island, New Hampshire, Idaho, Oregon, Maryland, Iowa, Missouri and Montana and has systems in development in Colorado and Wyoming.

"The May 30 deadline will be met from our perspective," said Todd Weinberg, Saber's New Jersey portfolio manager.

Texas

The state's registration system (TEAM), built by IBM and Austin, Tex.-based Hart InterCivic, experienced some problems during the just-completed early voting period for Saturday's constitutional amendment election. In all, 224 of the state's 254 counties currently use the system.

Ann McGeehan, the state's election director, acknowledged the system had hit some rough spots but added changes have been made and the issues are being worked out.

"The implementation of TEAM was not as smooth as we had hoped. Response time was exceedingly slow at times, and this meant that some counties had to work outside regular business hours to get their work done. However, we have made several changes and response time has greatly improved," she stated.

In addition to slow response times, some county officials reported that they did not receive up-to-date voter lists until the first day of early voting.

The vendors made changes, McGeehan said, and the process of generating lists for Election Day is working well and with no backlog.

While news reports have indicated some county election officials were disheartened by these problems, McGeehan is still hopeful the system will be a success.

"We continue to be optimistic that, in the long run, the state will provide a system that will result in greater functionality and a more accurate list."

Wisconsin

Wisconsin, which signed a contract with the Bermuda-based Accenture to build its registration system in November 2004, has faced ongoing criticism from local officials and state lawmakers. (Accenture had database contracts terminated or ended by mutual agreement in three other states - Colorado, Kansas and Wyoming.)

In March, *The Milwaukee Journal Sentinel* reported that some Wisconsin election officials complained that the system is much slower than local systems they worked with previously and that it was too complex and error-prone.

Kevin Kennedy, executive director of the State Elections Board (SEB), agreed some challenges remain but also noted how far the state has come.

"There are functionality and performance issues that must be addressed under the requirements of the state's contract with Accenture. [However}, in implementing a statewide voter registration system, Wisconsin's county and municipal election officials, along with SEB staff, have overcome some monumental challenges not faced by other states," Kennedy said.

He pointed out that prior to 2006, 1,539 municipalities with a population of less than 5,000 were not required to register voters and that more than 325 municipalities that did have voter lists had them in variety of formats. This left the state essentially starting from scratch as well as collecting registration data for the first time from more than one million residents in the smaller municipalities.

And while the system is not yet fully HAVA-compliant, the state has stayed in close contact with DOJ about its compliance efforts.

Kennedy also described recent progress, including work with Accenture to improve the system's efficiency, work with local election officials to improve the accuracy of voter matching functions and a partnership with the University of Wisconsin to create a web-based training program for clerks and staff involving specific aspects of the system.

This and the successful use of parts of the system in three previous statewide elections have led him to view the statewide voter registration system as an integral component of well-run elections.

"The statewide registration system is helpful in performing some key essential tasks required to manage an election in which the public can have confidence, including capturing voter information, printing poll books, and recording voter participation."

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NOTE: The Pew Center on the States (PCS) has released answers to frequently asked questions about the recent Pew/JEHT $2 million Request for Proposals. More details about the RFP are available at the PCS web page. Responses are due Monday, June 4.

II. Election Reform News This Week

- Elections were held in several states this week to varying degrees of success. In Marion County, Ind., five of the county's precincts never opened while 45 opened late. *The Indianapolis Star* described the vote as "perhaps the most chaotic, confused and bumbling election in Marion County's history."
- In Cuyahoga County, Ohio, Election Day reportedly went smoothly, with few, if any problems reported in the county's 164 precincts. According to the *Columbus Dispatch* , there were two "glitches" with electronic memory cards-one was missing, but found left in a machine and the other was corrupted, but with no votes lost. "This is about as close to flawless as we could get," Elections Board spokesman Alan Melamed told the paper.
- The election board in St. Louis, Mo. raised some eyebrows recently when it allowed two churches to use city voting machines to conduct elections for new pastors. As part of a community outreach program, the Election Board has held electronic voting machines demonstrations for many community groups, but there have only been two cases when the machines have been used in non-municipal, but real elections. Despite the educational aspect, church-state separation advocates told the *St. Louis Post-Dispatch* that they have never heard of another local government lending its voting technology to places of worship. "Internal church business is absolutely, positively no business of the St. Louis Board of Elections," said Barry Lynn, executive director of Americans United for the S! eparation of Church and State. But the city Board insists it's a good program. "A lot of people, especially seniors, are afraid to use them on Election Day and choose not to," board member Mary Wheeler Jones told the paper. "But take (the machines) to their church where there's no other way for them to vote, and you get 93-year-olds using them."
- They've rolled die, they've drawn cards and now they are relying on bingo balls to decide tied elections. With two candidates in the race for Crete Village (Ill.) Board tied with 553 votes each, including absentee ballots, Will County Clerk Nancy Schultz Voots used two bingo balls in a glass container to determine the final outcome. According the *Northwest Indiana Times,* Illinois county clerks can use whatever method they like to break a tie. Will County also uses the bingo ball lottery to determine the position of names on ballots. This was Will County's first tie since 2002.

III. Opinion This Week

National: Voting machines, Primary elections
Colorado: Partisan election offices
Florida: Paper trails, Primaries, Voting machines
Indiana: Modernization
Maryland: Vot! er registration

Mississippi: Voter ID, II
New York: Voting machines, II
Ohio: Cuyahoga County
South Carolina: Voter registration
Texas: Felon voting rights, Voter ID, II

Some sites require registration

IV. Job Postings

All job listings must be received by 12 p.m. Eastern on Wednesday for publication in our Thursday newsletter. Job listings are free but may be edited for length. Whenever possible, include Internet information. Please email job postings to *mmoretti@electionline.org*

ELECTIONS DIRECTOR - Navajo County, Ariz. Looking for a rewarding career while enjoying a relaxing country lifestyle? Navajo County and the White Mountains are for you! Navajo County is accepting applications for an Elections Director. This position is responsible for managing the Elections Department to include: planning, organizing and directing County wide elections; establishing policies, procedures and guidelines; ensuring voting and voting procedures are in compliance with Arizona State statutes; making public presentations; certifying results of elections; and developing and administering the department's budget. The successful candidate should have a Bachelor's Degree in Public or Business Administration, Political Science, or a closely related field; and three years of progressively responsible experience in conducting governmental elections, including one year in a supervisory or management capacity; **OR** equivalent combination of education, t! raining and experience; and must pass the Arizona State Election Certification program. Salary range is $50,750 - $63,438 per year, depending on qualifications. Benefits include paid leave. Please submit a Navajo County application to: Navajo County Governmental Complex; Attn: Human Resources; PO Box 668; Holbrook, AZ 86025. Position description and application information is available at www.co.navajo.az.us. EOE.

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Bryan Whitener/EAC/GOV 05/11/2007 06:18 PM	To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M. bcc Subject FYI - Today's media inquiries (5-11-07, Frid)

Commissioners:

Today we had the following media inquiries:

(1) Meg Cox, a freelance journalist in Chicago is working on an article about voter fraud and voter ID laws. She asked the following two questions:

1) Is the EAC still sending its "Elections Crimes" report to journalists who request the report on voter fraud and intimidation authored by Wang and Serebrov?
2) If the answer to #1 is yes, is the EAC still sending the "Election Crimes" report in these cases without comment--in other words, without indicating that it is not the Wang/Serebrov report?

We forwarded her questions to Curtis and replied to Ms. Cox that the chair has asked our Inspector General to review the circumstances surrounding this research project, as well as research done about voter ID. We said he has requested that EAC not comment on either one of these projects while his review is ongoing. We referred her to the following link: here. and said we'd be glad to make sure she receives the IG's review when it is completed.

(2) Jenna Portnoy of the Doylestown Intelligenca in Bucks Co., PA called again to ask about EAC's progress in determining the status of Pennsylvania's 102 funds. She wants to know the amount of money, if any, that they will have to return. We said that EAC is still reviewing the certifications submitted by the states and we hope to have this process completed as soon as possible. We said we are also evaluating all the reports submitted by the states regarding their 101 and 251 funds expenditures.

Bryan Whitener/EAC/GOV
05/14/2007 06:18 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Today's media inquiries (5-14-07, Mon)

Commissioners:

Today Meg Cox, a freelance journalist in Chicago, sent us the same two questions she sent us last Friday (see below). She had not been satisfied with our response. She is working on an article about voter fraud and voter ID laws. She said she is concerned that journalists are receiving a substitute report from EAC and not the real thing. We replied that we directed her to the one and only report adopted by EAC -- Election Crimes: An Initial Review and Recommendations for Future Study -- We noted that it contains clear language about the role of the consultants, identifies them by name and that their bios are included in the EAC report as Appendix D here. We said we would notify her when the IG has completed his review of this subject. We also noted the following contents of the report:

- Page one: "EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes.
- Page three: To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report.
- Page four: The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

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BACKGROUND: Last Friday's Q&A.

Meg Cox, a freelance journalist in Chicago is working on an article about voter fraud and voter ID laws. She asked the following two questions:

1) Is the EAC still sending its "Elections Crimes" report to journalists who request the report on voter fraud and intimidation authored by Wang and Serebrov?
2) If the answer to #1 is yes, is the EAC still sending the "Election Crimes" report in these cases without comment--in other words, without indicating that it is not the Wang/Serebrov report?

We forwarded her questions to Curtis and replied to Ms. Cox that the chair has asked our Inspector General to review the circumstances surrounding this research project, as well as research done about voter ID. We said he has requested that EAC not comment on either one of these projects while his review is ongoing. We referred her to the following link: here. and said we'd be glad to make sure she receives the IG's review when it is completed.

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